

UNITED STATES OF AMERICA,)
)
 V.) 5:08-CR-343-D-1
)
 ROBERT CARL STOKES,)
)
 DEFENDANT.)
)

1 DECEMBER 19, 2008

2 **THE COURT:** GOOD MORNING, COUNSEL. WE'RE HERE
3 TODAY IN CONNECTION WITH AN ORDER THIS COURT ENTERED ON
4 THE 16TH OF DECEMBER CONCERNING AN APPLICATION FILED BY
5 THE UNITED STATES FOR A POST-INDICTMENT RESTRAINING ORDER
6 CONCERNING THE DEFENDANT, ROBERT CARL STOKES. MR. STOKES
7 WAS INDICTED BY A GRAND JURY SITTING IN THE EASTERN
8 DISTRICT OF NORTH CAROLINA. THE UNITED STATES HAS FILED
9 AN APPLICATION AND REQUESTED A POST-INDICTMENT RESTRAINING
10 ORDER.

11 MR. HOWARD, IS THE GOVERNMENT READY TO PROCEED?

12 **MR. HOWARD:** WE ARE, YOUR HONOR.

13 **THE COURT:** MR. SHANAHAN, IS THE DEFENDANT READY
14 TO PROCEED?

15 **MR. SHANAHAN:** WE ARE, JUDGE.

16 **THE COURT:** ALL RIGHT. MR. HOWARD, THE COURT
17 HAS RECEIVED OBVIOUSLY THE MOTION THAT YOU FILED AND THE
18 APPLICATION AND THE PROPOSED RESTRAINING ORDER AND THEN
19 YOUR MEMORANDUM IN SUPPORT OF THAT. DID YOU WANT TO
20 OFFER -- WELL, FIRST I'D LIKE TO HEAR ARGUMENT FROM YOU IN
21 CONNECTION WITH YOUR APPLICATION, TO THE EXTENT THAT YOU
22 JUST WANT TO SUMMARIZE PERHAPS WHAT'S IN YOUR PAPERS, AND
23 TO THE EXTENT YOU WANT TO PRESENT EVIDENCE, THEN WE'LL
24 HEAR FROM MR. SHANAHAN ON BEHALF OF MR. STOKES.

25 **MR. HOWARD:** THANK YOU, YOUR HONOR. WE WOULD

1 JUST SUMMARIZE AND OTHERWISE REST ON THE PAPERS BEFORE THE
2 COURT WHICH YOU HAVE HAD AN OPPORTUNITY TO REVIEW. THE
3 MATTER IN CONTROVERSY IS THE FACT THAT A MAN NAMED LANCE
4 GILMAN IS IN WILSON, NORTH CAROLINA, HE'S REPRESENTED BY
5 JIM AYERS OF NEW BERN. HE'S SITTING ON A ROUGHLY \$350,000
6 PAYMENT, WHICH IS THE UNIVERSE OF FUNDS AT ISSUE TODAY.

7 WE MIGHT START, YOUR HONOR, NOW THAT THE DEFENDANT
8 IS --

9 **THE COURT:** THAT PAYMENT WAS SUPPOSED TO GO TO
10 HALLMART BUT THEN BLEASE COMPANY WAS CREATED AND BLEASE
11 COMPANY IS OWNED OR CONTROLLED BY THE DEFENDANT'S WIFE; IS
12 THAT THE FACTS?

13 **MR. HOWARD:** PRECISELY, YOUR HONOR. THE
14 DEFENDANT, CARL STOKES, SOLD HIS CROP INSURANCE LINE OF
15 BUSINESS TO MR. GILMAN. SOMETIME AFTER THAT, ON A DATE WE
16 DON'T IMMEDIATELY KNOW, MR. STOKES PURPORTS TO HAVE
17 TRANSFERRED THAT RIGHT TO COLLECT TO HIS WIFE IN A COMPANY
18 THAT SHE CONTROLS.

19 YOUR HONOR, IT'S THE GOVERNMENT'S POSITION THAT'S THE
20 DEFENDANT'S ASSETS AND THEY'RE FORFEITABLE UNDER BOTH
21 SUBSTITUTE AND DIRECT THEORIES. YOUR HONOR, IT'S ALSO OUR
22 VERY STRONG POINT TODAY, WE'RE NOT ASKING FOR YOU TO ORDER
23 THE FORFEITURE, WE'RE SIMPLY ASKING YOU TO GIVE US THE
24 OPPORTUNITY TO SECURE THEM SO THAT IF AND WHEN MR. STOKES
25 IS CONVICTED, THE FUNDS WILL BE AVAILABLE.

1 NOW, YOUR HONOR, WE BELIEVE THE PROBABLE CAUSE
2 SHOWING ON THE FACES OF THE AFFIDAVIT AND THE BRIEFS ARE
3 SUFFICIENT. WE DO HAVE A POWER POINT, IF THAT WOULD HELP
4 YOU. WE COULD WALK THROUGH THAT VERY QUICKLY.

5 BUT NONETHELESS, YOUR HONOR, WE'RE STANDING HERE
6 TODAY -- AND I ALSO HAVE THE BENEFIT OF MR. WEST, WHO'S
7 OUR IN-HOUSE GURU ON THAT POINT -- WONDERING IF THE
8 DEFENDANT IS GOING TO ARGUE, AS HE MAY, THAT THESE ARE NOT
9 HIS ASSETS WHATSOEVER ANYMORE, THEN HE HAS NO STANDING.
10 HIS EFFORT TO ISOLATE HIMSELF FROM THOSE ASSETS DIVESTS
11 HIMSELF FROM AN OPPORTUNITY TO CHALLENGE THIS HERE TODAY.

12 IF HE'S GOING TO ARGUE THAT THEY ARE HIS ASSETS, THEN
13 GOOD, WE WILL BE GLAD TO EXPLAIN TO THE COURT THEN FURTHER
14 WHAT'S ALREADY IN OUR BRIEFS, THE BASIS FOR FORFEITURE
15 THERE.

16 **THE COURT:** OKAY. ALL RIGHT. WELL, BEFORE I
17 HEAR FROM THE AGENT, I WANT TO HEAR FROM MR. SHANAHAN ON
18 MR. STOKES' POSITION. DOES HE CLAIM THAT THIS IS HIS
19 \$350,000?

20 **MR. SHANAHAN:** JUDGE, LET ME ANSWER YOUR
21 QUESTION. THE ISSUE IS, DOES HE HAVE STANDING TO PROCEED?
22 THE ANSWER TO THAT QUESTION IS YES. AND BECAUSE, AS
23 DISCLOSED TO THE GOVERNMENT, THE BLEASE COMPANY HAS, BY
24 WRITTEN DOCUMENT, AGREED TO LEND MR. STOKES \$250,000 FOR
25 PURPOSES OF HIS ATTORNEY'S FEES.

1 REALLY WHAT'S GOING ON HERE, JUDGE, IS AN INCREDIBLE
2 END RUN AROUND, NOT ONLY THE CONSTITUTION, BUT
3 SPECIFICALLY MY CLIENT'S 6TH AMENDMENT RIGHT TO COUNSEL
4 AND COUNSEL OF HIS CHOICE.

5 I WOULD GIVE YOU JUST WHAT I HOPE HELPS SET THE
6 CONTEXT OF WHAT BROUGHT US HERE TODAY. MR. GILMAN IS
7 ACTUALLY -- HAD WORKED FOR MY CLIENT FOR A NUMBER OF
8 YEARS. WHEN THE GOVERNMENT EXECUTED A SEARCH WARRANT BACK
9 IN 2006, THEY IMMEDIATELY GOT THE COOPERATION OF
10 MR. GILMAN. THAT LED ULTIMATELY TO AN INTERVIEW OF
11 MR. GILMAN ON NOVEMBER 11, WHICH IS ATTACHED TO THE PLEA
12 EXHIBIT. IF THE REPORT OF INTERVIEW IS CORRECT, IT
13 STARTED AT THREE IN THE MORNING AND ENDED AT THREE IN THE
14 AFTERNOON.

15 IN THAT CONVERSATION, GILMAN LAYS OUT WHAT HE SAYS
16 WAS HIS RELATIONSHIP ABOUT THIS ALLEGED PAYMENT, AND HE
17 MAKES REFERENCE TO OWING THE MONEY TO STOKES, AND MAKES
18 OTHER ASSERTIONS WHICH I BELIEVE FORM THE BASIS OF WHAT
19 THE GOVERNMENT THINKS IS A TRANSACTION. IT'S NOT PROVEN
20 UP IN ANY WAY AND, YOU KNOW, THEIR BRIEF IS FILLED WITH
21 THINGS THAT ARE NOT SUPPORTED BY FACTS THAT ARE CONTAINED
22 IN THEIR AFFIDAVIT.

23 BUT THE IMPORTANCE OF THAT, JUDGE, IS THAT THE
24 GOVERNMENT KNEW BEFORE THEY INDICTED GILMAN ABOUT THIS
25 PAYMENT. SO ON NOVEMBER 12, THEY INDICT STOKES AND THEY

1 GIVE NOTICE OF CRIMINAL FORFEITURE, AND THEY MAKE
2 REFERENCE TO THIS \$3,400,000.

3 I THINK IT'S IMPORTANT FOR YOUR CONSIDERATION TODAY
4 TO KNOW THAT THE INDICTMENT ALLEGES ONLY THAT THIS MONEY,
5 THIS \$3.4 MILLION, CAME ABOUT AS A RESULT FROM THE CROP
6 SEASONS 2005 AND 2006. THE INDICTMENT GOES ON TO SAY,
7 NOTICE OF SUBSTITUTED PROPERTY INCLUDES HIS HOME, THE
8 BUSINESS OFFICE WHERE HALLMART IS LOCATED, AND THE LOT AT
9 ATLANTIC BEACH. NO REFERENCE TO THIS GILMAN, NONE.

10 WHAT HAPPENED ON DECEMBER 5 WAS THAT I HAD A MEETING
11 HERE IN THIS BUILDING WITH THE PROSECUTOR FOR THE PURPOSE
12 OF REVIEWING DISCOVERY, ALSO TO DISCUSS THE PRETRIAL
13 ORDER, WHICH WE HAVE SUBMITTED FOR YOUR CONSIDERATION. AT
14 THAT TIME THE GOVERNMENT BROUGHT UP THE ISSUE OF
15 SETTLEMENT. THEY DISCLOSED ALSO THAT LANCE GILMAN WAS
16 COOPERATING AND HAD GIVEN A DETAILED INTERVIEW.

17 IN THAT CONTEXT OF OUR SETTLEMENT DISCUSSIONS, THE
18 GOVERNMENT SAID, YOU KNOW, IF WE DON'T GET A PLEA
19 AGREEMENT WORKED OUT WE'RE GOING TO SUPERSEDE THE
20 INDICTMENT. AND, BY THE WAY, WE'RE GOING TO LOOK AT
21 THOSE, WE UNDERSTAND THERE'S A PAYMENT DUE TO STOKES FROM
22 GILMAN. I IMMEDIATELY SAID, DON'T DO THAT BECAUSE MY FEE
23 IS TIED UP IN THAT. IMMEDIATELY DISCLOSED THAT TO THEM.
24 AND I SAID, BY THE WAY, I THINK YOU ARE WRONG IN YOUR
25 REPRESENTATION THAT GILMAN OWES THIS MONEY TO STOKES.

1 I JUST SAID THAT BECAUSE -- I DIDN'T HANDLE THE
2 TRANSACTIONS BUT MY PARTNER, A GOOD FRIEND, MR. RILEY
3 WHO'S HERE THIS MORNING, DID. WHAT I DID, AS A MATTER OF
4 FULL DISCLOSURE, AFTER I LEFT THE MEETING WITH THEM, WAS I
5 CONFERRED WITH THEM TO UNDERSTAND THE TRANSACTION. I JUST
6 WASN'T INVOLVED IN WHAT HAPPENED BACK IN '06 AFTER THE
7 RAID. THERE WERE REGULATORY THINGS WITH THE STATE OF
8 NORTH CAROLINA ABOUT HIS INSURANCE AGENCY. IT WAS THE
9 STATE GOVERNMENT THAT SAID HE NEEDED TO SELL HIS AGENCY.
10 HE DIDN'T WANT TO DO IT. MR. IVEY IS HERE TO TESTIFY
11 ABOUT ALL OF THESE THINGS, BUT JUST BY WAY OF FORECAST.

12 SO A TRANSACTION OCCURRED WHERE HE DID SELL HIS
13 AGENCY TO MR. GILMAN. THE ARRANGEMENTS ARE ORDINARY AND
14 CUSTOMARY, AND THIS IS IMPORTANT BECAUSE IT GOES TO, I
15 THINK, THE GOVERNMENT'S LACK OF KNOWLEDGE AND
16 MISUNDERSTANDING IN THE PAPERS. IT IS CUSTOMARY, WHEN YOU
17 ARE SELLING AN INSURANCE AGENCY, YOU DON'T KNOW WHAT THE
18 REVENUES MAY BE IN FUTURE YEARS OR, YOU KNOW, ESPECIALLY
19 IF YOU HAVE A PERSON THAT'S BEEN LONG TIME ASSOCIATED WITH
20 IT AND THERE HAS BEEN THIS RAID AND IT'S VERY PUBLIC, SO
21 YOU SELL THE ASSET. HE SOLD PART OF THE BUSINESS TO
22 GILMAN AND WHAT HAPPENED WAS HIS WIFE, WHO'S ALSO BEEN AN
23 AGENT FOR 20 SOME YEARS, LICENSED, THEN SET UP THE BLEASE
24 COMPANY, AND SHE RUNS THE COMPANY.

25 THE PAYMENTS TO GILMAN FOR WHAT HE BOUGHT, WHICH WAS

1 REALLY THE LIST OF CLIENTS AND ALSO THE EXTENSIVE FILES
2 WHICH WERE KEPT ON COMPUTER, I THINK THE GOVERNMENT WOULD
3 CONCEDE MY CLIENT DID -- EVERYTHING HE DID WAS SCANNED IN
4 THE COMPUTER. ALL THE INFORMATION IN THIS CASE ARE IN MY
5 CLIENT'S FILES. SO THAT'S WHAT HE GOT. BUT HE HAD TO GO
6 OUT IN 2008. THE INDICTMENT WAS '05 AND '06, MY GUY
7 OPERATES IN '07. IN '07, HE HAD TO GET BRAND NEW
8 CONTRACTS WITH CLIENTS AND THE PAYMENT WAS DERIVED AS A
9 PERCENTAGE OF COMMISSIONS EARNED. HE DOESN'T HAVE A RIGHT
10 TO THE COMMISSIONS, HE HAS A RIGHT TO THE METHOD OF
11 PAYMENT THAT COMES FROM THE COMMISSIONS.

12 SO BACK TO MY CONVERSATION WITH THE GOVERNMENT.
13 AFTER I CONFERRED WITH MR. IVEY, I WENT THE EXTRA STEP. I
14 WAS IN MCDONALD'S OVER IN CAMERON VILLAGE, WHICH I
15 SHOULDN'T HAVE BEEN THERE, BUT I WAS THERE. I CALLED,
16 SAID I'M GOING TO TELL THE GOVERNMENT, JUST TO MAKE SURE
17 THAT THEY KNOW THAT THE ASSET IS NOT MR. STOKES' BUT IT
18 WAS BLEASE'S. NOW, I CAN'T REMEMBER THE CONVERSATION --
19 I'M SORRY, IT WAS A VOICE MAIL MESSAGE, BUT I REMEMBER
20 WHERE IT WAS. I LEFT A MESSAGE, I BELIEVE, CONFIRMING
21 THAT I DIDN'T THINK STOKES OWNED IT BUT MY FEE WAS COMING
22 OUT OF IT. THAT WAS FRIDAY, THE 5TH OF DECEMBER.

23 THE FOLLOWING WEEK, I'M NOT SURE WHAT DAY, BUT I HAD
24 SPOKEN WITH MR. AYERS DIRECTLY. WE DID DOCUMENT TO
25 CONFIRM THE TRANSFER. WHAT HAPPENED WAS WHEN HALLMART

1 SOLD TO GILMAN, GILMAN THEN OWED THE RECEIVABLE BACK TO
2 HALLMART. HALLMART THEN IS BOUGHT IN AN ARMS-LENGTH
3 TRANSACTION BY BLEASE, WHICH WAS SET UP. SO BLEASE HAS
4 THE RIGHT TO RECEIVE THE PAYMENTS WHICH ARE GOING TO --
5 SUPPOSED TO COME IN '08, '09 AND 2010.

6 BLEASE THEN ASSIGNS THE RIGHT FOR MY LAW FIRM TO
7 RECEIVE \$250,000 PAYMENT FOR LEGAL FEES. GILMAN SIGNED A
8 NOTE, A DOCUMENT, CONFIRMING THAT ARRANGEMENT AND HOW THE
9 PAYMENTS WERE TO BE MADE ON THE 15TH OF DECEMBER. THE
10 FIRST 250, AND THEN THE REMAINDER WOULD BE PAID TO BLEASE.
11 IT WAS AN ASSIGNMENT OF BLEASE'S RIGHT TO RECEIVE THAT
12 PAYMENT, AND GILMAN SIGNED IT.

13 WHAT HAPPENED WAS THE GOVERNMENT CALLED DOWN -- THE
14 GOVERNMENT HAS A PROFFER LETTER WITH GILMAN AND THEY HAVE
15 AN AGREEMENT AND THEY TELL LANCE -- THEY TELL MR. AYERS,
16 THAT THEY HAVE -- THEY MAY BE INTERESTED IN THIS MONEY AND
17 NOT TO MAKE THE PAYMENT. AND MR. AYERS SAYS, WHAT AM I
18 GOING TO DO, I'M TRYING TO KEEP MY GUY FROM BEING
19 INDICTED. I UNDERSTAND THEIR POSITION. YOU HAVE AN
20 AGREEMENT AND OBLIGATION TO PAY BLEASE AND NOW THE
21 GOVERNMENT COMES IN AND SAYS, WE MAY HAVE A CLAIM TO THAT
22 MONEY. NOTHING FILED AT THAT TIME, BUT THEY PUT HIM ON
23 NOTICE.

24 MR. AYERS AND I SPOKE. HE SAID, I THINK WHAT I'LL DO
25 IS SEND IT IN TO SUPERIOR COURT AND LET YOU-ALL FILE

1 SOMETHING. THE GOVERNMENT INDICATED IN THE LETTER THEY
2 DIDN'T WANT IT TO HAPPEN, AND I AGREED TO THAT.

3 **THE COURT:** WHY SEND IT TO THE SUPERIOR COURT?

4 **MR. SHANAHAN:** THEY WERE GOING TO DEPOSIT THE
5 MONEY. SOMETIMES LIKE INSURANCE COMPANIES DO, PEOPLE
6 FIGHTING OVER MONEY PUT IT IN SUPERIOR COURT AND WALK
7 AWAY.

8 WHAT HAPPENED WAS, UNBEKNOWNST TO ME, WHEN I
9 TALKED -- WELL, ON DECEMBER 11, JUDGE, THAT WEEK, I GET AN
10 E-MAIL FROM THE GOVERNMENT. I ACTUALLY HAVE AN E-MAIL
11 CORRESPONDENCE, JUDGE, I THINK IT IS HELPFUL. MAY I
12 APPROACH?

13 **THE COURT:** YES.

14 **MR. SHANAHAN:** SERIES OF THREE E-MAILS, JUDGE.
15 BY WAY OF IDENTIFICATION, THE FIRST ONE IS GOING TO COME
16 ON DECEMBER 11 AT 7:14; THE SECOND ONE IS DECEMBER 16 AT
17 11:00 A.M.; THE THIRD ONE IS ON THE SAME DAY, DECEMBER 16,
18 AT 6:22. I HAVE YELLOW HIGHLIGHTED BOTH MY COPIES AND THE
19 ONE I SUPPLIED TO THE GOVERNMENT.

20 NOW, STARTING WITH THE DECEMBER 11 AT 7:14 P.M., IF
21 YOU LOOK DOWN -- ACTUALLY THERE'S TWO E-MAILS ON THIS ONE.
22 JOSH HOWARD SENT ME AN E-MAIL REFERRING TO MELISSA, MY
23 NEWEST LAWYER IN OUR FIRM, JUDGE, WHO'S WORKING WITH ME ON
24 THE CASE.

25 THE LAST PARAGRAPH OF HIS E-MAIL FROM 5:46 SAYS:

1 MOST IMPORTANTLY, AND IN LIGHT OF YOUR FOLLOW-UP CALL FROM
2 OUR MOST RECENT MEETING -- THAT'S THE CALL I MADE TO HIM
3 FROM MCDONALD'S DRIVE-THRU WINDOW -- STEVE WEST AND I ARE
4 GOING TO WANT TO TALK WITH YOU ON MONDAY OR TUESDAY ABOUT
5 THE NEXT PAYMENT FROM GILMAN TO THE BLEASE COMPANY. HAVE
6 YOU GOT CONFERENCE CALL AVAILABILITY ON MONDAY? MY
7 RESPONSE AT 7:14 THAT NIGHT WAS: I WILL MAKE TIME. AND I
8 DID.

9 WHAT HAPPENED WAS, WE HAD A CONVERSATION ON MONDAY,
10 WHICH I THOUGHT WAS GOING TO BE WITH MR. WEST. IT WAS THE
11 TIME THEY CHOSE AND THE TWO OF US AND I WERE GOING TO
12 TALK.

13 **THE COURT:** MONDAY, THE 15TH?

14 **MR. SHANAHAN:** YES. AND WE DID, IN FACT, CHAT
15 ON MONDAY THE 15TH. INSTEAD OF MR. WEST, MY GOOD FRIEND
16 FROM WHEN I WORKED UP HERE, HE WAS NOT ON THE PHONE CALL
17 BUT IT WAS JOSH AND TWO AGENTS. THEY PROCEEDED TO INQUIRE
18 OF ME ABOUT THE TRANSACTION AND THE STATUS. I FELT I WAS
19 BEING INTERROGATED A LITTLE BIT, BUT I WAS GLAD TO EXPLAIN
20 TO THEM, BECAUSE I THOUGHT WE WERE TALKING ABOUT THE FEE.
21 I WANTED TO EXPLAIN TO THEM IT REALLY WASN'T MY CLIENT'S,
22 I DON'T THINK IT WAS PROCEEDS, IT WAS TWO YEARS LATER AND
23 THEY WERE CONFUSED BY GILMAN WHO, IN GILMAN'S MIND, HE MAY
24 HAVE THOUGHT HE OWED STOKES, IN TERMS OF, I BOUGHT THIS
25 AGENCY, IT BELONGED TO STOKES.

1 THE REPORT OF INTERVIEW WAS CRYPTIC AND NOT ACCURATE.
2 SO I WAS WILLING TO AND DID WALK THEM THROUGH AND
3 EXPLAINED TO THEM, PLEASE, HOW THE TRANSACTION OCCURRED,
4 HOW IT WAS DONE AT ARMS-LENGTH, HOW IT WAS DONE FOR
5 CONSIDERATION. NEVER DID THEY TELL ME THAT THEY WERE
6 ABOUT TO OR THAT THEY HAD, ON DECEMBER 12, FILED THEIR EX
7 PARTE APPLICATION.

8 SO IN CHRONOLOGICAL ORDER, I DISCLOSED IT, THEY ASKED
9 TO MEET WITH ME, THEY GO TELL GILMAN'S ATTORNEY NOT TO
10 SEND THE MONEY. THEN THEY TELL ME THEY WANT TO TALK TO ME
11 ABOUT IT. THEN THEY COME IN EX PARTE AND FILE THEIR
12 APPLICATION AND THEN ON MONDAY THEY ATTEMPT TO GET WHAT,
13 IN EFFECT, IS DISCOVERY FROM ME ABOUT THE TRANSACTION, AND
14 I'M IN GOOD FAITH.

15 I EVEN ASKED THE PROSECUTOR WHETHER HE HAD AUTHORITY
16 TO RESOLVE THE ISSUE IN THE CONVERSATION BECAUSE I THOUGHT
17 WE WERE WORKING OUT SOMETHING ON THIS. I SAID, I WAS VERY
18 CLEAR FROM THE BEGINNING, I'M VERY CONCERNED ABOUT
19 CONFLICT. HERE WE ARE TALKING ABOUT SETTLEMENT AND IN THE
20 SAME CONVERSATION WHERE WE'RE TALKING ABOUT MY FEE, WHICH
21 MAKES ME UNCOMFORTABLE, MY FIRM'S FEE, WHICH MAKES ME
22 UNCOMFORTABLE.

23 I REPRESENTED AT THAT TIME THAT PLEASE WAS WILLING TO
24 ALLOW THE 250 TO GO TO MY FIRM SO THAT WE COULD MOVE
25 FORWARD ON THE DEFENSE, AND THAT THE REMAINING AMOUNT OF

1 MONEY WOULD GO INTO A TRUST ACCOUNT THAT WE COULD AGREE
2 ON, AND WE WOULD MOVE FORWARD. I WAS ADVISED AT THAT TIME
3 THE GOVERNMENT WOULD NEVER AGREE TO WHAT THEY DESCRIBE AS
4 AN EXCESSIVE FEE. THE WORD MIGHT HAVE BEEN A LITTLE MORE
5 COLORFUL, BUT THEY WOULD NOT AGREE TO THAT WITHOUT A COURT
6 ORDER.

7 SO WHAT HAPPENED, JUDGE, I GOT OFF THAT CALL AND WAS
8 BUSY WITH OTHER THINGS, AS YOU WILL SEE FROM THE NEXT
9 E-MAIL. THE NEXT DAY, HAVING THOUGHT ABOUT IT, I THOUGHT
10 THAT THAT CALL JUST LEFT A BAD TASTE IN MY MOUTH. SO I
11 SAY: HAVING THOUGHT A BIT ABOUT OUR CONVERSATION
12 YESTERDAY AND THE GOVERNMENT'S RECENT ACTIONS TO IMPEDE MY
13 CLIENT'S WIFE'S COMPANY FROM COLLECTING MONEY -- I KNEW
14 AND TOLD THEM I HAD SPOKEN TO AYERS -- AND KNOWING THAT A
15 PORTION OF THE MONEY IS COMMITTED TO PAYING CARL STOKES'
16 ATTORNEY'S FEES IN DEFENDING THE INDICTMENT AGAINST HIM,
17 SURE FEELS LIKE THE GOVERNMENT IS INTERFERING WITH MY
18 CLIENT'S RIGHT TO LEGAL COUNSEL AND THE ATTORNEY-CLIENT
19 RELATIONSHIP ITSELF. IF TRUE, THIS COULD POSE A
20 STRUCTURAL ERROR FOR THE GOVERNMENT IN ITS PROSECUTION.
21 AS I INDICATED YESTERDAY, I AM KNEE-DEEP IN A BANKRUPTCY
22 TRIAL SET TO BEGIN TOMORROW, SO I HAVE NO TIME TODAY TO
23 CONSIDER OR RESEARCH THIS SITUATION, BUT I DON'T WANT MY
24 WILLINGNESS TO GIVE THE GOVERNMENT A FEW DAYS TO CONSIDER
25 IF IT'S GOING TO MAKE A CLAIM AGAINST THE NOW OVERDUE

1 PAYMENT TO BE CONSTRUED AS A WAIVER OF MY CLIENT'S RIGHTS,
2 ESPECIALLY AS IT RELATES TO HIS RIGHT TO COUNSEL.

3 AND THE LAST ONE IS REALLY JUST FOR COMPLETION. WHAT
4 HAPPENED WAS JOSH DIDN'T RESPOND TO THAT BUT LATER THAT
5 DAY YOUR ORDER APPARENTLY CAME DOWN. SO RIGHT AT THE
6 CLOSE OF BUSINESS, 5:30 OR SO, I GET A CALL FROM HIM. I
7 THANKED HIM FOR IT. I SAID AT THE END: I WILL RESERVE
8 FURTHER COMMENT IN VIEW OF OUR CONVERSATION YESTERDAY
9 UNTIL I CAN REVIEW EVERYTHING, BUT AT A MINIMUM I FEEL
10 VERY TAKEN ADVANTAGE OF.

11 MY POINT IN SHARING ALL OF THIS, JUDGE, IS THAT I
12 BELIEVE THAT THE MOTIVATION FOR THE FILING OF THE
13 APPLICATION AND THE WAY IN WHICH IT UNRAVELED IS WHAT
14 WE'RE REALLY HERE ABOUT TODAY, IS NOT ASKING THAT MONEYS
15 BE HELD IN CASE FORFEITURE OCCURS BUT TRYING TO CUT OFF MY
16 CLIENT'S ABILITY TO HAVE COUNSEL REPRESENTING HIM.

17 NOW, THE GOVERNMENT CONTENDS, JUDGE, IN ITS
18 APPLICATION, OR IN THE MEMORANDUM -- EXCUSE ME -- IN
19 SUPPORT.

20 **THE COURT:** THE MEMORANDUM FROM YESTERDAY OR THE
21 FIRST MEMORANDUM?

22 **MR. SHANAHAN:** THE MEMORANDUM FROM THE 18TH,
23 JUDGE. THEY BEGIN WITH THE BILMAN CASE, WHICH I PRESUME
24 THE COURT IS FAMILIAR WITH, IT'S A 1990 CASE. THEY ARE
25 SAYING, WE'VE GOT -- I'M SURE THE POWER POINT WILL SAY THE

1 SAME THING -- WE HAVE AN INDICTMENT AND THEREFORE, BECAUSE
2 WE HAVE AN INDICTMENT, THAT'S PROBABLE CAUSE AND WE DON'T
3 NEED TO DO ANYTHING ELSE TO TIE UP THE MONEY.

4 WHAT THEY DON'T TELL YOU IS THAT BILMAN HAS BEEN
5 UNIVERSALLY REJECTED IN ALMOST EVERY OTHER CIRCUIT, HAS
6 BEEN CRITICIZED BY OTHER DISTRICT COURT JUDGES IN THIS
7 CIRCUIT. BUT MORE IMPORTANTLY THAN THAT, WHAT THEY DIDN'T
8 BRING TO YOUR ATTENTION OR DISCLOSE IS THE LOMBARDI VERSUS
9 UNITED STATES CASE, WHICH IS A 4TH CIRCUIT CASE FROM 1995.

10 IN THAT CASE, AND I HAVE COPIES OF IT IF THE COURT
11 WANTS IT AND COPIES FOR THE GOVERNMENT. I'M SURE THEY ARE
12 AWARE OF IT. LOMBARDI ADDRESSES THE ISSUE OF WHETHER OR
13 NOT, IN CONTEXT OF A RULE 11, WHETHER OR NOT A CLIENT HAD
14 TO BE ADVISED OF HIS RIGHTS AT A RULE 11 WITH REGARD TO
15 ASSET FORFEITURE. IN THAT CASE, THE COURT SAID,
16 FORFEITURE IS A SENTENCING MATTER, IT'S NOT PART OF A
17 CHARGE ITSELF, AND THAT'S WHY IN THIS INDICTMENT THEY
18 WON'T CALL NOTICE.

19 SO THE UNITED STATES DEPARTMENT OF JUSTICE HAS TAKEN
20 A POLICY POSITION WHICH SAYS THAT YOU DON'T CHARGE THE
21 GRAND JURY ON FORFEITURE BECAUSE IT'S NOT PART OF THE
22 CHARGE, IT'S PART OF SENTENCING. THEREFORE, JUDGE, IF
23 THEY'RE CONTENDING THAT THERE WAS PROBABLE CAUSE ON THE
24 FORFEITURE ASPECT, THEY SHOULD HAVE CHARGED THE GRAND
25 JURY. AND IF THEY DID, A, I WANT TO SEE IT. B, IF THEY

1 DID DO IT, THEN THEY ARE IN VIOLATION OF DEPARTMENT OF
2 JUSTICE POLICY. MY POINT BEING, THEY CAN'T SIMPLY RELY ON
3 SAYING THEY HAVE PROBABLE CAUSE ON THE ASSET FORFEITURE
4 ASPECT OF THE CASE, BECAUSE IT WOULDN'T HAVE BEEN OR
5 SHOULDN'T HAVE BEEN PRESENTED TO THE GRAND JURY. THE
6 PROGENY OF CASES THAT FOLLOWED LOMBARDI, I THINK, SUPPORT
7 THAT POSITION, JUDGE.

8 **THE COURT:** DO YOU THINK A VIOLATION OF A U. S.
9 ATTORNEY'S MANUAL CREATES SOME RIGHTS IN YOUR CLIENT,
10 ASSUMING THERE IS SUCH A VIOLATION?

11 **MR. SHANAHAN:** WELL, I WOULD SAY, JUDGE, THAT I
12 DON'T KNOW WHETHER OR NOT THEY CHARGED -- WHAT I'M
13 SUGGESTING IS, I DON'T BELIEVE THAT JOSH HOWARD
14 REPRESENTED -- WOULD VIOLATE DOJ POLICY. ASSUMING THEY
15 DIDN'T VIOLATE THE POLICY, THE GRAND JURY WOULD NOT HAVE
16 BEEN GIVEN THE CHARGE OR INSTRUCTION ON THE ASSET
17 FORFEITURE PART AND THEREFORE YOU CAN'T RELY AND SAY, I
18 HAVE PROBABLE CAUSE ON THE ASSET FORFEITURE ASPECT OF THE
19 CASE UNDER BILMAN.

20 **THE COURT:** YOUR POSITION WOULD BE I COULDN'T
21 RELY ON THE INDICTMENT, BUT THEY ALSO HAVE AN AFFIDAVIT
22 FROM AN AGENT, RIGHT? IT'S NOT THEIR ONLY EVIDENCE,
23 RIGHT? TO THE EXTENT THAT THEY'RE RELYING ON THE
24 INDICTMENT, THEY ALSO SUBMITTED AN AFFIDAVIT FROM AN
25 AGENT.

1 **MR. SHANAHAN:** YES. I WOULD SAY OKAY, AND NOW,
2 THEY DID SUBMIT AN AFFIDAVIT AND THE AFFIDAVIT TALKS ABOUT
3 NOTHING MORE THAN WHAT'S IN THE INDICTMENT. THEY GO BACK,
4 SAY WE RAIDED THEM IN '06, WE HAVE THIS INFORMATION, YADA,
5 YADA, YADA. HERE'S THE PROBLEM. THEY ASK -- YOUR FIRST
6 QUESTION IS, WHO HAS THE MONEY? GILMAN HAS THE MONEY. SO
7 THEY ARE COMING IN, NOT TRYING TO RESTRAIN MR. STOKES'
8 MONEY BUT A THIRD PARTY, AND THE THIRD PARTY IS TO PAY THE
9 MONEY TO YET A FOURTH PARTY.

10 THEIR INDICTMENT, AND THEY HAVE A FOOTNOTE IN HERE
11 THAT SOMEHOW SAYS, WELL, THE BLEASE COMPANY IS A SHAM. NO
12 EVIDENCE IN THEIR AFFIDAVIT ABOUT THAT. ALSO, WHAT ABOUT
13 THE TRANSACTION TO GILMAN? WAS IT FOR VALUE AND
14 CONSIDERATION? WHERE'S THE EVIDENCE ON THAT? THEIR
15 AFFIDAVIT DOESN'T SPEAK TO EITHER OF THOSE ISSUES. THEY
16 JUST DROP IT IN A FOOTNOTE, SAY IT'S HIS WIFE AND
17 THEREFORE IT MUST BE A SHAM.

18 THE FACT SHE WORKED IN THE COMPANY AND HAS HER OWN
19 LICENSE AND THE WHOLE ARRANGEMENT WAS BLESSED BY THE STATE
20 OF NORTH CAROLINA WHEN THEY CAME AFTER HIS LICENSE. NONE
21 OF THAT IS ADDRESSED IN THERE.

22 THEY THEN SORT OF, IN PARAGRAPH THREE ON PAGE 11, GET
23 AROUND TO AT LEAST TRYING TO TAKE AN END RUN AT THE ISSUE,
24 WHAT I THINK THIS IS ALL ABOUT, AND THAT IS TO TRY AND
25 PREVENT MY CLIENT FROM HAVING COUNSEL OF HIS CHOICE.

1 I'M NOT SURE WHETHER THIS IS THE TIME TO DO IT,
2 JUDGE, BUT I DO HAVE AN AFFIDAVIT OF MR. STOKES WHICH I DO
3 THINK -- AND MRS. STOKES. THE AFFIDAVIT OF MR. STOKES
4 ESSENTIALLY PROVIDES THAT HE DOES NOT, OTHER THAN THIS --
5 I'LL TENDER THE ORIGINAL TO THE COURT AND A COPY FOR THE
6 JUDGE.

7 ESSENTIALLY THE AFFIDAVIT REPRESENTS THAT HE NEEDS
8 THIS MONEY TO HAVE HIS COUNSEL OF CHOICE, WHICH IS MY LAW
9 FIRM. PARAGRAPH FIVE, I TRY AND ADDRESS OR AT LEAST
10 RESPOND SOMEWHAT TO THE ONLY SHOWING THAT THE GOVERNMENT
11 MAKES. THEY RAISE THIS ISSUE AND THEY ANTICIPATE A JONES
12 FARMER TYPE ARRANGEMENT. AND THEY SAY OH, HE'S GOT THE
13 ABILITY TO MAKE HIS PAYMENTS BECAUSE HE HAS A HOME. THEY
14 FAILED TO MENTION HIS WIFE OWNS IT JOINTLY WITH HIM AND
15 SPOUSE HAS NO DUTY TO MAKE THE SUPPORT. THEY ALSO FAIL TO
16 MENTION THERE'S A MORTGAGE OVER \$565,000 AGAINST HIM.

17 THE HALLMART BUILDING, THEY SAY, HAS A RECENT TAX
18 VALUE OF 277. FAILURE TO MENTION \$78,000 MORTGAGE OR THAT
19 IT IS JOINTLY OWNED BY HE AND HIS WIFE. FINALLY, HIS
20 BEACH PROPERTY, WHICH IS JUST A LOT, WHICH IS OWNED
21 JOINTLY BY HIS WIFE.

22 SO THEY THEN GO ON AT SOME LENGTH TO TALK ABOUT HIS
23 WIFE STANDS TO INHERIT A FORTUNE. THAT'S PRETTY
24 SENSATIONAL, JUDGE. I DON'T KNOW WHAT A FORTUNE IS THESE
25 DAYS. I KNOW A LOT OF PEOPLE LOST A FORTUNE RECENTLY IN

1 THE MARKET. THEY TALK ABOUT THINGS THAT ARE INACCURATE
2 REGARDING MY CLIENT'S WIFE'S MOTHER'S ESTATE, WHICH
3 CERTAINLY ISN'T OF ANY PROBATIVE INTEREST, I WOULDN'T
4 THINK, TO THE COURT IN THE ISSUES BEFORE US.

5 SO TO COME CIRCLE TO ANSWER YOUR QUESTION ABOUT, DOES
6 MY CLIENT HAVE STANDING, MY CLIENT HAS STANDING BECAUSE
7 HIS CLAIM IS THE \$250,000 PORTION OF THE APPROXIMATE
8 \$350,000 PAYMENT WHICH IS NOW --

9 **THE COURT:** HOW DOES HE STILL HAVE A CLAIM ABOUT
10 THAT IF IT'S BEEN ASSIGNED?

11 **MR. SHANAHAN:** HE DOESN'T HAVE A CLAIM, HE HAS
12 STANDING. THE ISSUE IS, DOES HE HAVE STANDING.

13 **THE COURT:** I KNOW, BUT GOING -- I MEAN, IT'S
14 BECAUSE THE PAYMENT IS BEING MADE ON BEHALF OF -- FOR HIS
15 BENEFIT SO THAT HE CAN RETAIN YOUR LAW FIRM?

16 **MR. SHANAHAN:** YES. HE'S GOING OUT TO GET A
17 LOAN TO BE ABLE TO DEFEND HIMSELF, WHICH WOULD BE SOME
18 EVIDENCE HE DOESN'T HAVE THE MONEY HIMSELF, I WOULD THINK,
19 JUDGE. AND NOW THE GOVERNMENT, BEFORE THE LOAN
20 TRANSACTION CAN BE COMPLETED, HAS GONE TO THAT THIRD PARTY
21 AND SAID, DON'T MAKE THE PAYMENT. WHILE IT'S ALLEGEDLY
22 NEGOTIATED WITH ME, COME INTO COURT EX PARTE TO TRY AND
23 TIE THE MONEY UP. IT HAS NO SHOWING AND CAN MAKE NO
24 SHOWING AS TO WHAT THE HISTORY -- WHAT'S THEIR SHOWING,
25 JUDGE, THAT THE PAYMENT FROM THAT -- THE SALE TO THE

1 GILMAN AGENCY WAS NOT ARMS-LENGTH, AND THAT THEY HAVE A
2 CLAIM BACK? ESPECIALLY WHEN GILMAN HAD TO GO OUT, IF YOU
3 UNDERSTAND THE NATURE OF THE INSURANCE BUSINESS, EVERY
4 YEAR AND GET NEW CONTRACTS WITH HIS CLIENTS AND THE MONEY
5 COMES IN IN '08, UNRELATED; MY CLIENT HAD NO INVOLVEMENT
6 IN IT. '08 MONEY, WHEN THEY ARE CLAIMING '05, '06. THEY
7 HAD NO SHOWING IN ANY OF THE MATERIALS.

8 SECONDLY, WHAT'S THEIR SHOWING THAT THE HALLMART'S
9 SALE TO BLEASE WAS A SHAM, AS THEY CONTEND? I ADVISED
10 THEM IT WAS AN ARMS-LENGTH TRANSACTION FOR CONSIDERATION.
11 HOW'S IT STRUCTURED? I SAID THEIR ACCOUNTANT THEN WORKED
12 OUT THE STRUCTURAL. AND SO MY QUESTION IS, WHERE'S THEIR
13 EVIDENCE THAT IT'S A SHAM?

14 SO THOSE TWO QUESTIONS ALONE AND HOW ABOUT THE
15 ASSIGNMENT ULTIMATELY FROM BLEASE OF THE FIRST 250,000 TO
16 MY FIRM TO MAKE THE PAYMENT. ON THE RECORD BEFORE YOU,
17 THEY HAVE NO EVIDENCE, ZERO EVIDENCE THAT ANYTHING ABOUT
18 THAT TRANSACTION IS SUSPECT IN ANY WAY. AND FOR THEM TO
19 SUGGEST THAT THE COURT CAN GO TO A THIRD PARTY CREDITOR
20 AND SAY DON'T MAKE THE PAYMENT, I THINK WOULD BE A TOTAL
21 MISCHARACTER OF JUSTICE.

22 **THE COURT:** GOING BACK AGAIN, JUST SO THAT I GET
23 A SENSE, AND I'M GOING TO TAKE SOME EVIDENCE, BUT IT'S
24 HALLMART AND GILMAN, THEY HAVE AN AGREEMENT AND GILMAN
25 THEN OWES HALLMART THESE PAYMENTS. HALLMART THEN MAKES

1 SOME KIND -- ENTERS SOME KIND OF AGREEMENT WITH BLEASE.

2 **MR. SHANAHAN:** HALLMART THEN -- RIGHT, SELLS THE
3 BUSINESS TO BLEASE.

4 **THE COURT:** OKAY. SELLS THE BUSINESS TO BLEASE.
5 SO BLEASE THEN PRESUMABLY NOTIFIES GILMAN, HEY WE'VE
6 BOUGHT HALLMART AND WHAT, GILMAN, YOU OWED TO HALLMART,
7 YOU NOW OWE TO BLEASE.

8 **MR. SHANAHAN:** EXACTLY.

9 **THE COURT:** OKAY. AND THEN --

10 **MR. SHANAHAN:** AND SO -- AND HALLMART, I'M
11 SORRY, GILMAN INSURANCE AGENCY ACKNOWLEDGED THE ASSIGNMENT
12 AND SPECIFICALLY ACKNOWLEDGED AND AGREE -- WHAT HAPPENS IS
13 THESE COMMISSIONS OR THE PAYMENTS, JUDGE, AND KNOWING
14 EXACTLY WHAT THEY ARE SINCE THEY ARE BASED ON COMMISSIONS
15 FROM '08, THEY COME IN A LITTLE SPORADICALLY. THE
16 AGREEMENT WAS THE FIRST 250,000, WHICH IS ALREADY IN
17 GILMAN'S ACCOUNT --

18 **THE COURT:** SO GILMAN ACKNOWLEDGES THE
19 ASSIGNMENT AND THEN BLEASE NOTIFIES GILMAN HEY, WE KNOW
20 YOU OWE US 350, WE WANT YOU TO PAY 250 TO THE SHANAHAN LAW
21 FIRM AND WE WANT YOU TO PAY 100, BALLPARK OR WHATEVER,
22 ROUND NUMBERS, TO BLEASE, AND THIS IS AS TO THE PAYMENT
23 THAT WAS OTHERWISE DUE ON DECEMBER 15.

24 **MR. SHANAHAN:** YES, SIR. JUDGE, WE WOULD JUST
25 POINT OUT, AS PART OF THIS CONVERSATION WHY I THINK THE

1 REAL ISSUE REVOLVES AROUND THE PAYMENT TO THE FIRM, IS
2 THAT UNDER UNITED STATES VERSUS GONZALES-LOPEZ, 2006 CASE
3 FROM THE SUPREME COURT, THAT STRUCTURAL ERROR, IF THERE'S
4 BEEN A WRONGFUL FORFEITURE OF MONEY WHICH DENIES THE
5 CLIENT HIS RIGHT TO COUNSEL, THAT THAT IS A STRUCTURAL
6 ERROR THAT WOULD REQUIRE, AT A MINIMUM, THE RETRIAL OF THE
7 CASE. SO IF YOU TAKE THIS MONEY NOW, THIS IS REALLY --
8 REALLY IS WHAT'S COME TO BE KNOWN AS THE GONZALES-LOPEZ
9 ISSUE. THE CLIENT COMES IN, SAYS THE GOVERNMENT WANTS
10 MONEY. THE DEFENDANT SAYS, I NEED THE MONEY TO DEFEND
11 MYSELF. IF HE DOESN'T GET IT AND TRIES THE CASE, GOES UP
12 ON APPEAL, THEY SAY, HE COULDN'T DEFEND HIMSELF BECAUSE HE
13 LOST THE RIGHT OF COUNSEL OF HIS CHOICE THAT HE COULD PAY,
14 AND I HAVE BEEN REPRESENTING HIM FOR OVER TWO YEARS, THEN
15 THAT'S A STRUCTURAL ERROR. YOU DON'T REVIEW IT ON APPEAL
16 AND YOU HAVE TO GO BACK AND RETRY THE CASE.

17 AND SO IT IS THE COURTS, I THINK, UNDER THE
18 GONZALES-LOPEZ CASE AND ITS PROGENY, IS A REAL PROBLEM.
19 THAT'S INTUITIVELY, YOU KNOW, MY STREAM OF CONSCIOUSNESS
20 SAID THERE WAS A PROBLEM WITH WHAT WAS GOING ON HERE, AND
21 NOW I HAVE HAD A LITTLE MORE TIME TO THINK ABOUT IT, I
22 THINK THE REAL PROBLEM HERE IS IF YOU TIE THIS MONEY UP,
23 IT WILL CREATE A GONZALES-LOPEZ ISSUE.

24 I THINK THEY HAVE SO MANY HURDLES TO JUMP THROUGH.
25 WHERE'S GILMAN? HOW COME HE'S NOT HERE? MY QUESTION IS,

1 IT'S THEIR MONEY THEY ARE TRYING TO TIE UP. I THINK THEY
2 DON'T HAVE THE RIGHT PARTIES HERE, THEY HAVEN'T CONNECTED
3 ALL OF THESE DOTS. THEY HAVEN'T MADE ANY ATTEMPT TO --
4 THEY RAN TO THE COURTHOUSE IN SECRET TO TRY TO GET AN
5 ORDER TO HAVE THE MONEY TIED UP. IT'S NOW OBVIOUSLY A
6 DISTRACTION TO MY ABILITY TO BE ABLE TO REPRESENT MY
7 CLIENT EFFECTIVELY.

8 I THINK THEY HAVE FAILED TO MAKE THEIR SHOWING IN THE
9 PLEADINGS, WHICH THEY SAID THEY WOULD REST ON. NO
10 EVIDENCE OF A SHAM TRANSACTION. THERE'S TWO MAIN
11 TRANSACTIONS AND THEN OBVIOUSLY MY FIRM WOULD ONLY STAND
12 IN THE SHOES OF BLEASE. BUT THEY HAVE NO EVIDENCE THAT
13 EITHER OF THEM WERE SHAM TRANSACTIONS. THEY SAID TODAY
14 THEY THOUGHT IT WAS DIRECT.

15 I HEARD REPRESENTATION, SUBSTITUTE AND DIRECT. IT
16 CAN'T BE DIRECT MONEY BECAUSE THE MONEY THAT THEY ARE
17 TALKING ABOUT WAS DERIVED IN THE YEAR 2008 AS A RESULT OF
18 CONTRACTS THAT HAVE BEEN ENTERED INTO IN 2008. THE 2007
19 YEAR IS NOT INVOLVED.

20 THERE'S SOME REPRESENTATION IN HERE ABOUT 2007
21 PAYMENTS, BUT WHAT HAPPENED WAS THIS DEAL DIDN'T GO DOWN
22 UNTIL 2007. THE HALLMART AGENCY HAD ALREADY EARNED THOSE
23 PAYMENTS. SO EACH YEAR IN THE INSURANCE INDUSTRY IS A
24 BRAND NEW YEAR. FEBRUARY 28, UNDER THIS KIND OF
25 INSURANCE, THESE CONTRACTS HAVE TO BE SIGNED. EVERY YEAR

1 YOU HAVE TO SIGN THEM UP. IT'S NOT TAINTED. WE'RE TWO
2 YEARS DOWN THE ROAD. THE ONLY REASON THERE'S EVEN A
3 REFERENCE TO COMMISSIONS, IS IT'S THE MEASURING STICK BY
4 WHICH THE MONEY IS PAID.

5 SO ABSENT THAT SHOWING, THERE SHOULD BE NO -- THE
6 GOVERNMENT SHOULD NOT -- THE COURT SHOULD NOT ENTER AN
7 ORDER RESTRAINING GILMAN FROM MAKING THE PAYMENTS.

8 **THE COURT:** THANK YOU. ALL RIGHT, MR. HOWARD,
9 DID YOU WANT TO RESPOND BY WAY OF ARGUMENT OR PRESENT
10 EVIDENCE? WHAT WOULD YOU LIKE TO DO?

11 **MR. HOWARD:** YOUR HONOR, THANK YOU. I WOULD
12 LIKE TO RESPOND TO A FEW POINTS, PARTICULARLY STRUCTURAL
13 ERROR. I HAVE CASES FOR THE COURT, INCLUDING UNITED
14 STATES VERSUS WINGERTER. IT'S A 4TH CIRCUIT DECISION OF
15 2005. IF I MAY APPROACH AND HAND THAT UP?

16 **THE COURT:** YES.

17 **MR. HOWARD:** IT MAKES VERY CLEAR THAT THE 4TH
18 CIRCUIT ALLOWS THE PRETRIAL RESTRAINT OF SUBSTITUTE
19 ASSETS. IT IS, AS MR. SHANAHAN HAS POINTED OUT, THE ONLY
20 CIRCUIT THAT DOES THAT BUT THAT IS THE LAW IN THIS
21 CIRCUIT.

22 SECONDLY, YOUR HONOR, IF YOU WILL TURN TO PAGE NINE
23 OF THAT DECISION, YOUR HONOR, IT IS UNDER HEADNOTE TWO ON
24 THE RIGHT SIDE OF THE PAGE: IT'S WELL-SETTLED THAT
25 PRETRIAL RESTRAINT OF PROPERTY WHEN THERE'S PROBABLE CAUSE

1 TO BELIEVE IT WILL BE SUBJECT TO FORFEITURE DOES NOT
2 VIOLATE A DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL,
3 EVEN IF THE RESTRAIN OF THOSE FUNDS MAKES IT IMPOSSIBLE
4 FOR HIM TO PAY AND TO RETAIN HIS CHOSEN LAWYER.

5 YOUR HONOR, PART OF THAT PHRASING "CHOSEN" IS VERY
6 IMPORTANT. MR. SHANAHAN HAS POINTED OUT ALREADY HE DIDN'T
7 KNOW WHAT A FORTUNE IS ANYMORE. I SUSPECT I DO, AND I
8 THINK A QUARTER OF A MILLION DOLLAR FEE IS SUCH A FORTUNE.

9 IF I COULD APPROACH, I WOULD ALSO LIKE TO HAND UP, IN
10 RE: RESTRAINT OF BOWMAN GASKINS FINANCIAL GROUP. THAT IS
11 ANOTHER DECISION OF THE EASTERN DISTRICT OF VIRGINIA
12 FOLLOWING THIS CIRCUIT'S LAW. YOU CAN SEE IN THE
13 HEADNOTES JUST BELOW JUDGE ELLIS' NAME: PRE-INDICTMENT
14 RESTRAINT DID NOT ABRIDGE TARGETED INDIVIDUAL'S 6TH
15 AMENDMENT RIGHT TO COUNSEL.

16 YOUR HONOR, THAT'S PRE-INDICTMENT. THAT'S AN EVEN
17 HARDER BRIDGE TO CROSS, AND THE LAW PROVIDES FOR IT.
18 THERE'S NO STRUCTURAL ERROR HERE.

19 IF YOU WILL TURN TO PAGE 15, THE SUBSTANCE OF THAT IS
20 ANALYZED. THERE, FAMILY MEMBERS HAD OBJECTED, MUCH AS IS
21 GOING ON HERE. MOVANT'S FINAL ARGUMENT IS THAT, HEADNOTE
22 FOUR ON THE RIGHT SIDE, IS THAT RESTRAINT OF THESE FUNDS
23 DEPRIVES A OF HIS 6TH AMENDMENT RIGHT TO COUNSEL, AND
24 THAT'S THE UNINDICTED TARGET, AND HIS FAMILY INTEND TO USE
25 BOWMAN ACCOUNT FUNDS TO FINANCE A'S DEFENSE.

1 IT GOES DOWN TO POINT OUT, SUPREME COURT PRECEDENT
2 AND PRETRIAL RESTRAINT OF FORFEITABLE ASSETS DOES NOT
3 ABRIDGE THE 6TH AMENDMENT RIGHT TO COUNSEL. YOUR HONOR,
4 THERE'S NO STRUCTURAL ERROR HERE BECAUSE THE 6TH AMENDMENT
5 RIGHT TO COUNSEL IS A QUALIFIED RIGHT. AN INDIGENT MAN
6 CANNOT DEMAND A QUARTER OF A MILLION DOLLAR LAWYER.

7 FURTHERMORE, STRUCTURALLY THIS PROCEEDING, UNDER THE
8 STATUTE, BEGINS WITH OR SETS OUT A SPECIFIC ORDER OF
9 EVENTS, AND THIS DEFENDANT HAS TO SHOW THAT HE HAS NO
10 OTHER ASSETS WITH WHICH TO HIRE A LAWYER. THERE'S NOT A
11 GONZALES-LOPEZ PROBLEM HERE BECAUSE WE'RE NOT AT TRIAL
12 YET. HE'S NOT GOING TO TRIAL WITHOUT A LAWYER. WE'LL GET
13 HIM A LAWYER.

14 YOUR HONOR, OUR CONVERSATIONS THAT MR. SHANAHAN HAS
15 BROUGHT UP, WE'RE INDEED TRYING TO SEE WHAT WE CAN DO TO
16 MOVE THIS CASE ALONG, BECAUSE WE HAVE HAD VERY CORDIAL
17 RELATIONS FOR OVER TWO YEARS OF INVESTIGATION HERE. IF
18 THE AMOUNT OF MONEY WEREN'T SO REMARKABLE TO ME, WE MAYBE
19 WOULD HAVE GOTTEN FURTHER ALONG WITH THAT.

20 YOUR HONOR, I HAVE DONE THIS NOW FOR ALMOST NINE
21 YEARS. I'VE ONLY HAD ONE CASE WHERE A DEFENSE ATTORNEY
22 WOULD HAVE GOTTEN THAT MUCH MONEY. THAT WAS WHEN I WAS AT
23 THE INDEPENDENT COUNSEL'S OFFICE AND THE SUBJECT WAS THE
24 PRESIDENT OF THE UNITED STATES. THAT'S A BREATHTAKING
25 AMOUNT OF MONEY, AND THIS DEFENDANT'S CLAIM THAT A QUARTER

1 OF A MILLION DOLLARS IS NECESSARY TO FUND THIS DEFENSE IS
2 OUTRAGEOUS.

3 SECONDLY, YOUR HONOR, WE STILL DON'T SEE, WITHOUT ANY
4 LAW OR PRECEDENT FROM THE DEFENSE, WHAT AN ANTICIPATED
5 LOAN FROM HIS SPOUSE WOULD DO TO CREATE STANDING FOR HIM.

6 FINALLY, YOUR HONOR -- WELL, LET ME MOVE TO ANOTHER
7 POINT. THAT'S NOT THE FINAL POINT. WE HAVE NOTED IN THE
8 BRIEFS THE DEFENDANT'S WIFE STANDS TO INHERIT FUNDS.

9 JUDGE, WHAT THAT SHOWS YOU, AND THE REASON THAT'S
10 RELEVANT, IS THAT THEY HAVE OTHER RESOURCES. IF SHE IS
11 WILLING TO LOAN HIM THE MONEY OF THESE PAYMENTS FROM LANCE
12 GILMAN, SHE OUGHT TO BE WILLING TO LOAN HIM THE PROCEEDS
13 OF THE ESTATE, WHICH IS ABSOLUTELY UNTAINTED AND HAS
14 NOTHING TO DO WITH CARL STOKES, BY ANYONE'S ACCOUNT.

15 THE DEFENDANT HAS ALSO RAISED QUESTIONS ABOUT WHY A
16 THIRD PARTY -- HOW CAN WE RESTRAIN THE ASSETS OF A THIRD
17 PARTY BEFORE THEY'RE PAID OUT. I HAVE LAW ON THAT, TOO.
18 YOUR HONOR, IT'S UNITED STATES VERSUS KIRSCHENBAUM, A 7TH
19 CIRCUIT CASE: THIRD PARTIES MAY BE RESTRAINED TO PRESERVE
20 THE GOVERNMENT'S INTEREST WHERE THE COURT HELD THE
21 PROPERTY IN THE NAME OF THE DEFENDANT'S WIFE, AFTER
22 FINDING THE DEFENDANT WAS THE TRUE OWNER.

23 YOUR HONOR, THAT'S ON PAGE 795 OF THE WESTLAW
24 PRINT-OUT.

25 AND FINALLY, YOUR HONOR, I JUST WANT TO ADDRESS THE

1 ONE POINT OF THE SERIES OF E-MAILS. WHAT HAPPENED HERE,
2 AND THESE E-MAILS, I WOULD STRESS, ARE AFTER WE FILED OUR
3 EX PARTE UNDER SEAL APPLICATION WITH THE COURT. WE FILED
4 FRIDAY. WE HAD HOPED THAT WE COULD GET IT SOONER THAN WE
5 DID. WE THOUGHT WE WOULD HAVE IT MONDAY BY THE TIME WE
6 SPOKE WITH MR. SHANAHAN.

7 AS A RESULT, WE COULDN'T TELL HIM ABOUT AN EX PARTE
8 UNDER SEAL APPLICATION, WHICH IS UNFORTUNATE, BUT IT WAS
9 IN PROCESS. I HAD HOPED THAT WE COULD EXPLAIN TO HIM AT
10 THAT TIME, AS WE DID ON THE PHONE AT THAT TIME, EXPLAIN TO
11 HIM THE PROCESS OF THE JONES-FARMER HEARING AND WHAT WE
12 WOULD DO, SECURE THE ASSETS AND GIVE THEM AN OPPORTUNITY
13 OR A VEHICLE TO CHALLENGE IT, IF NECESSARY.

14 AGAIN, YOUR HONOR, ALL WE WERE TRYING TO DO THEN AND
15 ALL WE ARE TRYING TO DO NOW, IS TO GET THE COURT TO SECURE
16 THE ASSETS SO THAT THEY CAN'T BE FRITTERED AWAY OR PAID TO
17 OTHER PURPOSES. AND IN THIS CASE, STOPPING THEM FROM
18 BEING PAID TO THE ATTORNEY IS NO 6TH AMENDMENT ERROR, AS
19 THE CASES I HANDED UP SHOW. THOSE CASES ALSO SHOW THAT
20 SPECIFICALLY BECAUSE WE KNEW THE INTENDED PURPOSE IS MORE
21 BASIS TO KNOW WE HAD TO MOVE URGENTLY.

22 YOUR HONOR, WITH THAT, WE'RE AVAILABLE TO YOU FOR
23 YOUR QUESTIONS.

24 **THE COURT:** WHAT DO YOU HAVE TO SAY TO THE
25 ARGUMENT THAT -- IS THERE ANYTHING IN THE RECORD ABOUT THE

1 TRANSACTION BETWEEN BLEASE AND HALLMART? IS THAT
2 TRANSACTION DOCUMENT PART OF THE RECORD?

3 **MR. HOWARD:** WE HAVE IT HERE AND I CAN PULL THAT
4 UP FOR A POWER POINT. JUST TO MAKE SURE THE CHRONOLOGY OF
5 THE EVENTS, BECAUSE I KNOW ALL OF US HAVE LIVED WITH THIS
6 CASE FOR SO LONG, WE SOMETIMES CAN TALK PAST IT. SO I'LL
7 PULL UP THAT TIMELINE.

8 THE INITIAL EVENT, YOUR HONOR, ON THE LEFT SIDE OF
9 THE SCREEN, WAS IN NOVEMBER OF 2006, WHEN FEDERAL AGENTS
10 SEARCHED A NUMBER OF LOCATIONS IN WILSON, INCLUDING THE
11 DEFENDANT'S HOME, WHICH IS THERE ON THE TOP LEFT. THAT
12 HOME IS ALSO NOW THE CORPORATE OFFICES REGISTERED WITH THE
13 STATE FOR THE BLEASE CORPORATION.

14 YOUR HONOR, THE HALLMART AGENCY ITSELF OR THE
15 PHYSICAL LOCATION OF IT IS THE BOTTOM RIGHT. THAT'S THE
16 DEFENDANT'S BUILDING.

17 NOW, YOUR HONOR, LATER ON IN AUGUST, THE USDA
18 ADMINISTRATIVE WING, THE RISK MANAGEMENT AGENCY, UPHELD
19 THEIR ADMINISTRATIVE SUSPENSION OF HIS CROP INSURANCE
20 AUTHORITY.

21 **THE COURT:** IS THAT LIKE A BAR LICENSE THAT
22 ATTACHES TO HIM; IS THAT HOW THAT WORKS?

23 **MR. HOWARD:** CORRECT, YOUR HONOR. SO AT THAT
24 POINT THEY HAD HAD EFFECTIVELY QUASI JUDICIAL PROCEEDINGS
25 TO REVOKE HIS LICENSE ON THE BASIS OF HIS CONDUCT.

1 NOW WE'LL MOVE ON. JUST THREE WEEKS LATER -- ALL OF
2 THIS, BY THE WAY, IS IN THE PLEADINGS BEFORE THE COURT.
3 BLEASE WAS FORMED ON 13 SEPTEMBER. THEN EIGHT DAYS LATER,
4 HALLMART SELLS ITS ASSETS IN THIS CROP INSURANCE BUSINESS
5 TO LANCE GILMAN.

6 YOUR HONOR, CROP INSURANCE CONTRACTS AUTOMATICALLY
7 RENEW, UNLESS YOU CANCEL THEM. SO MR. GILMAN'S BOOK OF
8 BUSINESS THAT HE BOUGHT FROM MR. STOKES IS DIRECTLY
9 FORFEITABLE BECAUSE THIS COMPANY IS THE ONE THAT THIS
10 DEFENDANT USED TO EXECUTE THIS FRAUD. HE THEN SOLD THAT
11 COMPANY AND THE PROCEEDS OF THAT SALE ARE THE PROCEEDS OF
12 THE FRAUD.

13 NOW, 21 SEPTEMBER, HALLMART CROSSED THE SALES ASSETS
14 TO GILMAN AND THREE DAYS LATER CARL IS STILL ACTING AS
15 PRESIDENT --

16 **THE COURT:** YOUR ARGUMENT REALLY -- IS YOUR
17 ARGUMENT REALLY THAT IT'S SUBSTITUTE? I MEAN, MR.
18 SHANAHAN -- AGAIN, YOU-ALL HAVE DEALT WITH THIS CASE
19 LONGER THAN I HAVE -- ARGUED THAT THE TRANSACTIONS AT
20 ISSUE IN THE INDICTMENT DEALT WITH 2005 AND 2006, BUT YOUR
21 POINT WOULD BE IT DOESN'T MATTER, IT'S SUBSTITUTE.

22 **MR. HOWARD:** THAT IS ALSO A POINT BUT, YOUR
23 HONOR, IT'S ALSO DIRECT BECAUSE IT CREATED A GOING CONCERN
24 VALUE, WHICH IS WHAT THIS DEFENDANT CREATED. SOME OF THE
25 CLIENTS ARE VERY MUCH STILL UNDER INVESTIGATION. INDEED,

1 CLIENTS ON LANCE GILMAN'S LIST THAT HE BOUGHT FROM THIS
2 MAN ARE PEOPLE TALKED ABOUT ON THE VIDEO WE SUBMITTED TO
3 THE COURT. YOUR HONOR, THAT IS A THOROUGHLY CORRUPT BOOK
4 OF BUSINESS GENERATED DURING THE TIME LISTED IN THE
5 INDICTMENT.

6 YOUR HONOR, ON 24 SEPTEMBER THIS DEFENDANT IS STILL
7 FILING DOCUMENTS AS PRESIDENT OF HALLMART, AND TWO DAYS
8 LATER THE DEFENDANT'S WIFE APPEARS TO BE PRESIDENT OF
9 HALLMART AS SHE DISSOLVES IT.

10 NOW, THE NEXT ENTRY IN OCTOBER OF '07, DEFENDANT'S
11 WIFE IS SIGNING A W-9 THAT SHE GAVE TO LANCE GILMAN AS
12 BLEASE DOING BUSINESS AS HALLMART. YOUR HONOR, WE HAVE
13 ALL OF THESE PAPERS THAT WE CAN HAND UP.

14 YOUR HONOR, IN INTEREST OF EFFICIENCY, I'VE HANDED UP
15 THE FULL ARRAY OF THINGS THAT MIGHT COME UP.

16 ON OCTOBER 8, IT WOULD APPEAR THAT ROBIN IS NOW THE
17 HEAD OF BLEASE, DOING BUSINESS AS HALLMART. THIS
18 TRANSACTION BETWEEN THE TWO, NOW THAT THE HOME HAS BEEN
19 SEARCHED AND THE OFFICE HAS BEEN SEARCHED, NOW THE USDA
20 HAS ADMINISTRATIVELY REVOKED DEFENDANT'S RIGHT TO ISSUE
21 CROP INSURANCE.

22 NOW, AFTER ALL OF THIS, THEY BEGIN TO TRY TO INSULATE
23 HIM FROM THE PROCEEDS, AND SHE HAS CREATED THE BLEASE
24 COMPANY ONLY THEN. YOUR HONOR, SECONDLY ON OCTOBER 8, WE
25 KNOW, FROM OTHER EVIDENCE, AND IT IS EXHIBIT 8, THIS IS

1 SOMETHING LANCE GILMAN GAVE TO US. WE KNOW THAT CARL, IN
2 SUBSTANCE AND IN FACT, REMAINED ACTIVE IN CONTROLLING ALL
3 OF THESE TRANSACTIONS, THIS RELATIONSHIP WITH LANCE
4 GILMAN.

5 IF WE COULD PULL UP EXHIBIT 8 IN ITS ENTIRETY. IT
6 SAYS: LANCE, PLEASE, WHEN YOU ISSUE CHECKS TO US FOR
7 MULTI-PERILS CROP INSURANCE, WE WOULD APPRECIATE YOU
8 SENDING US A COPY OF THE STATEMENT SO WE CAN KEEP UP WITH
9 THE PAYMENTS WE WILL BE RECEIVING.

10 YOUR HONOR, THIS IS CARL STOKES' MONEY. HE, IN HIS
11 OWN HAND, AS YOU CAN SEE WHERE IT SAYS "THANKS, CARL", HAS
12 ASSOCIATED HIMSELF WITH THESE FUNDS.

13 MOVING FORWARD, YOUR HONOR. APPARENTLY THE
14 TRANSACTION DRAWN UP TO SELL THE RIGHT TO COLLECT FROM
15 LANCE GILMAN FROM CARL'S HALLMART TO HIS WIFE'S BLEASE
16 COMPANY, WASN'T FINAL BECAUSE LAST WEEK, AFTER WE STARTED
17 TALKING ABOUT THIS MONEY, THEY GO TO LANCE GILMAN AND THEY
18 GET HIM TO SIGN LEGAL DOCUMENTS. CARL HIMSELF GOES AND
19 DOES THAT. WE DON'T HAVE THEM, JIM AYERS DOESN'T HAVE
20 THEM, GILMAN DOESN'T HAVE THEM. THEY ARE STILL TRYING TO
21 INSULATE CARL STOKES FROM THESE PROCEEDINGS AS RECENTLY AS
22 LAST WEEK.

23 SO ULTIMATELY, YOUR HONOR, IT'S THE GOVERNMENT'S
24 POSITION THAT, AS YOU CAN SEE IN THIS LAST ENTRY, WHICH IS
25 THE ASSETS SALES AGREEMENT BETWEEN THE DEFENDANT AND

1 MR. GILMAN, THE PAYMENT WAS DUE ON THE 15TH. WE BELIEVE
2 THAT'S STOKES' PAYMENT BUT HE'S SAYING IT'S NOT, AND WE
3 DON'T THINK HE HAS STANDING OTHERWISE. SHE WOULD HAVE A
4 RIGHT TO CHALLENGE IT. WE'RE NOT GOING TO MAKE OFF WITH
5 THE MONEY. SHE HAS A RIGHT TO COME IN IN AN ANCILLARY
6 PROCEEDING, THE DETAILS WHICH MR. WEST CAN PROJECT FOR THE
7 COURT, IF NECESSARY, BUT SHE WOULD HAVE TO PURSUE THAT
8 OPTION. IN THE MEANTIME, WE SIMPLY ASK FOR YOU TO FOLLOW
9 THE TERMS OF THE STATUTE WHICH ALLOW US TO RESTRAIN THESE
10 ASSETS PENDING TRIAL.

11 **THE COURT:** YOUR PAPERS ALSO TALKED ABOUT AN
12 ALTERNATIVE REMEDY ASSOCIATED WITH A BOND. TELL ME YOUR
13 VIEWS ON THAT.

14 **MR. HOWARD:** WE WOULD WELCOME THAT. THAT IS AN
15 ALTERNATIVE REMEDY.

16 **THE COURT:** WHAT FORM WOULD THAT TAKE, IN YOUR
17 VIEW?

18 **MR. HOWARD:** YOUR HONOR, THAT'S A POINT WHERE,
19 AGAIN, OUR IN-HOUSE GURU, MR. WEST, WOULD BE MOST CAPABLE
20 TO ANSWER.

21 **THE COURT:** ALL RIGHT, I'LL HEAR FROM MR. WEST.

22 **MR. WEST:** YOUR HONOR, IT COULD BE ANY FORM THAT
23 WOULD SATISFY US. LIKE, FOR EXAMPLE, AN IRREVOCABLE
24 LETTER OF CREDIT MADE OUT TO THE GOVERNMENT PAYABLE IN THE
25 EVENT THAT THE FUNDS WERE ACTUALLY DETERMINED TO BE

1 FORFEITABLE OR SOME OTHER TYPE OF BOND, WHATEVER WOULD
2 ACTUALLY -- WOULD DEFINITELY BE PAID IF THE FUNDS WERE
3 ULTIMATELY FORFEITED.

4 **THE COURT:** ALL RIGHT. THE COURT HAS BEEN
5 HANDED AND RECEIVED GOVERNMENT'S EXHIBITS 1 THROUGH 15.
6 DID YOU WANT TO BE HEARD ON THOSE, MR. SHANAHAN?

7 **MR. SHANAHAN:** JUST BRIEFLY, JUDGE. THE
8 INTERESTING PART IS THEY ARE JUST PAPERS HERE, BUT THEY
9 DIDN'T ADDRESS THE ISSUE YOU ASKED ABOUT. THEY CAN
10 CHARACTERIZE THEM AND TALK ABOUT THEM, THEY DON'T PROVE
11 ANYTHING WITHOUT HAVING SOMEBODY TESTIFYING ABOUT WHY IT
12 HAPPENED.

13 IF YOU FOLLOW THEIR OWN TIMELINE HERE, STOKES
14 INSURANCE IS SUSPENDED. IT'S A GOVERNMENT ACTION THAT
15 TAKES PLACE. HE CAN'T CONTINUE IN THE BUSINESS. SO HE'S
16 GOT TO DIVEST HIMSELF. SO HE SELLS A PORTION OF IT TO
17 GILMAN, CROP INSURANCE, AND HE SELLS EVERYTHING ELSE TO
18 HIS WIFE, THE BLEASE COMPANY.

19 WHAT'S THE INFORMATION THAT YOU HAVE IN FRONT OF YOU
20 ABOUT THAT TRANSACTION BEING LAWFUL, LEGITIMATE, OR
21 OTHERWISE? YOU HAVE THE DISCONNECT. THEY CAME IN IN '06,
22 THEY TAKE ACTION IN '07, AND NOW WE'RE ALL THE WAY INTO
23 '08. NO EVIDENCE IN HERE OF WHO HIS CLIENTS WERE IN '06
24 AND WHETHER THEY ARE ATTACHED TO '08 OR '07.

25 SO ROBIN STOKES, BECAUSE SHE USED THE NAME HALLMART,

1 I THINK THEY ARE CONFUSED. THAT'S OBVIOUSLY A TRADE NAME.
2 WHEN SHE BOUGHT THE ASSETS, SHE HAS AN ENTIRELY NEW
3 COMPANY. THAT'S A LEGITIMATE ARMS-LENGTH TRANSACTION,
4 WHICH THERE'S NO EVIDENCE THAT IT'S NOT. THE BURDEN IS ON
5 THEM TO SHOW THAT. THE THRESHOLD THEY ARE NOT GETTING
6 THROUGH, IN MY OPINION, IS THERE PROBABLE CAUSE TO BELIEVE
7 THESE ASSETS ARE SUBJECT TO FORFEITURE?

8 THE NEXT STEP IS, IF THEY ARE WRONG ON THAT, THEN IT
9 DOES CREATE A PROBLEM FOR THEM ON THE GONZALES-LOPEZ.
10 THEY WANT TO TALK ALL ABOUT GONZALES-LOPEZ, BUT YOU ONLY
11 GET TO THOSE ISSUES -- THEY HAVE TO GET THROUGH THE
12 PROBABLE CAUSE ISSUE. I DON'T THINK THERE'S ANY EVIDENCE
13 THAT THAT'S THE CASE.

14 SO ALL OF THESE DOCUMENTS LOOK GREAT. THEY CAN SAY
15 THEY HAPPENED IN THIS PERIOD OF TIME. THERE'S A
16 LEGITIMATE EXPLANATION AS TO WHY IT HAPPENED. HE LOST HIS
17 LICENSE. IF I LOST MY LAW LICENSE, WHAT WOULD I DO? I
18 WOULD ASK SOMEBODY ELSE TO TAKE THE CASES I'VE GOT. SO
19 THERE'S A LEGITIMATE REASON FOR DOING THAT, NOT CONSISTENT
20 WITH THE THEORY HE'S HIDING IT OR DOING SOMETHING.

21 WE'RE NOW FAST-FORWARDING, TALKING ABOUT '08
22 COMMISSIONS THAT ARE NOT MONEYS THAT DID NOT ARISE FROM
23 THE ACTIONS ALLEGED IN THE COMPLAINT. I THINK THEY ARE
24 MISSING. THEY DON'T GET TO THE ISSUE OF PROBABLE CAUSE.

25 NOTHING ABOUT THE FACT THAT SOMEONE INCORPORATES

1 SOMETHING THAT'S SUSPICIOUS OR SUSPECT ON ITS FACE.
2 EXHIBIT 2, THAT SOMEBODY FILES ARTICLES OF INCORPORATION,
3 SEEMS TO ME THEY HAVE A LEGITIMATE COMPANY, OUGHT TO START
4 BY DOING THAT, JUDGE. THEY FILED EXHIBIT 3. THAT'S
5 LEGITIMATE.

6 HERE'S THE ASSET PURCHASE AGREEMENT THAT WENT TO THE
7 TROUBLE OF HAVING IT DRAWN UP BY A LAW FIRM. THEY
8 REPRESENT IN THEIR PLEADINGS -- PART OF THIS INFURIATES
9 ME -- THEY HAVE THIS BRIEF THAT HAS ALL OF THESE FACTS
10 THAT AREN'T SUPPORTED BY AFFIDAVIT.

11 THEY CLAIM GILMAN WAS REPRESENTED BY MY LAW FIRM.
12 I'D LIKE ONE OF THESE PEOPLE IN THIS ROOM TO GET UP ON THE
13 WITNESS STAND AND TESTIFY TO THAT. IT'S A FALSE,
14 INACCURATE, AND MISLEADING STATEMENT UNSUPPORTED BY
15 AFFIDAVIT, AND THERE ARE A NUMBER OF THEM IN THEIR
16 PLEADING.

17 WHAT I'M ARGUING IS THIS AGREEMENT, LENGTHY AS IT IS,
18 IS SIGNED AND NOTARIZED, AND THAT'S WHAT YOU WOULD EXPECT
19 TO SEE IN A LEGITIMATE TRANSACTION.

20 A BILL OF SALE. OH, WHAT'S ILLEGITIMATE ABOUT THAT?
21 IT'S A PERFECTLY DOCUMENTED TRANSACTION. THEY HAVE THE
22 RIGHT TO SUBPOENA THAT INFORMATION AS PART OF THEIR GRAND
23 JURY PROCEEDINGS, AND THEY DID NOT.

24 ITEM 6 IS A DISSOLUTION. A LOT OF COMPANIES JUST
25 SHOT DOWN AND GO AWAY. THESE GUYS WENT TO THE TROUBLE OF

1 FILING THE APPROPRIATE DOCUMENTS WITH THE STATE OF NORTH
2 CAROLINA. W-9, LEGITIMATE BUSINESS TRANSACTION. NOTHING
3 ON ITS FACE IS ILLEGITIMATE.

4 NOW, IT IS TRUE THAT CARL STOKES HAS TO WORK FOR A
5 LIVING. HE CAN'T WORK AS AN AGENT BUT HE CAN CERTAINLY
6 WORK IN THE COMPANY, WHICH HE DID. "WE" REFERS TO THE
7 COMPANY. IF HE HAD SAID "ME", THIS EXHIBIT 8 MIGHT BE
8 MEANINGFUL, JUDGE, BUT HE SAID "WE", TALKING ABOUT THE
9 COMPANY FOR WHICH HE'S A W-2 EMPLOYEE.

10 EXHIBIT 9, I'M NOT SURE WHAT THEY ARE TRYING TO SHOW
11 BY THIS EXHIBIT EXCEPT IT SHOWS ROBIN STOKES IS RUNNING
12 THE PLACE. CORPORATE CERTIFICATE OF ASSUMED NAME.
13 AMAZING, THEY WENT RIGHT DOWN AND FILED THE DOCUMENTS
14 SAYING HERE'S EXACTLY WHAT WE'RE DOING SO THE WORLD CAN
15 SEE IT.

16 EXHIBIT 11, DOCUMENTING THE TRANSACTION. ACTUALLY
17 THIS IS -- I'M NOT SURE WHAT THIS IS. IT'S ALL THE
18 INFORMATION RELATIVE TO HOW GILMAN SET UP HIS COMPANY AND
19 I THINK IF THEY TALKED TO GILMAN, WHICH IT APPEARS THEY
20 HAVE, GILMAN WOULD TELL YOU HE INCORPORATED HIS OWN
21 COMPANY. NO EVIDENCE THAT MY FIRM REPRESENTED GILMAN, AND
22 IF FACT WE DID NOT. THE FACT GILMAN WENT DOWN AND FILED
23 ARTICLES OF INCORPORATION, WHAT'S THAT EVIDENCE OF? THEY
24 HAVEN'T CHARGED GILMAN WITH ANY WRONGDOING. ARE THEY
25 TAKING ALL OF GILMAN'S MONEY? HAVE THEY MADE A CLAIM,

1 JUDGE, FOR THE -- IF GILMAN -- REMEMBER, GILMAN'S ON THE
2 FIRST YEAR OF THE AGREEMENT TO PAY 50 PERCENT OF THE
3 COMMISSIONS. WHERE'S THEIR CLAIM ON THE OTHER 50 PERCENT,
4 JUDGE? WHY AREN'T THEY TAKING ALL 700,000, IF THIS IS
5 NOTHING MORE THAN THEIR WAY OF DOING AN END RUNNING
6 AROUND, USING THE LAW OF FORFEITURE TO DEPRIVE MY CLIENT
7 OF RIGHT TO COUNSEL.

8 A PICTURE OF CARL STOKES AT HIS OFFICE DESK TAKEN
9 BACK IN 2006, I DON'T THINK HAS ANYTHING TO DO WITH
10 \$350,000 THAT'S IN ISSUE IN THIS CASE. AND PICTURES OF
11 THE FARMERS, I DON'T KNOW. WHAT EVIDENCE IS THAT OF
12 PROBABLE CAUSE THAT THE MONEY THAT THEY SEEK TO HAVE YOU
13 TIE UP IN THIS FASHION IS SUBJECT TO FORFEITURE?

14 I DON'T THINK THEY CAN DO IT, JUDGE. THEY JUST CAN'T
15 CONNECT THESE TWO TRANSACTIONS IN A MEANINGFUL WAY THAT
16 WOULD WARRANT OR FIND PROBABLE CAUSE THAT THIS MONEY IS
17 SUBJECT TO FORFEITURE. IF FOR SOME REASON THE COURT DOES
18 FIND THAT, THAT WE WOULD REQUEST AN OPPORTUNITY TO MAKE A
19 SHOWING UNDER GONZALES THAT HE NEEDS THESE FUNDS.

20 THEY KEEP BRINGING UP THE WIFE. THE MONEY IS NOT
21 COMING FROM THE WIFE. THE MONEY IS COMING FROM BLEASE
22 COMPANY AND IT WOULD MAKE SENSE, IF YOU THINK ABOUT IT,
23 THAT THIS INDICTMENT THAT THE GOVERNMENT ALLEGES -- MY
24 CLIENT WASN'T THE RECIPIENT, WASN'T THE GUY WHO HAD EVER
25 MADE A CLAIM. HE WORKED FOR AN INSURANCE COMPANY. THEIR

1 CLAIM IS MY CLIENT HELPED THEM AND AS A RESULT GOT FUNDS
2 THAT HE OTHERWISE WOULDN'T BE ENTITLED TO, INCLUDING THE
3 COMMISSIONS. AND SO IT SEEMS TO MAKE SENSE THAT THE MONEY
4 OUGHT TO COME FROM THAT, BUT I THINK THE BURDEN IS ON THE
5 GOVERNMENT TO SHOW PROBABLE CAUSE WITH REGARD TO THIS
6 MONEY, AND THEY CANNOT. THERE'S NO EVIDENCE OF THAT
7 TRANSACTION TO BLEASE IS A SHAM, AND IT IS NOT. AND
8 THEREFORE THE GOVERNMENT FAILED TO SHOW PROBABLE CAUSE.

9 **THE COURT:** DO YOU HAVE A COPY OF THE GONZALES
10 CASE?

11 **MR. SHANAHAN:** I DO. BY THE WAY, THIS IS
12 JUSTICE SCALIA'S DECISION. DISREGARD THE NOTE ON THE
13 FRONT PAGE, JUDGE.

14 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM THE
15 GOVERNMENT, MR. HOWARD?

16 **MR. HOWARD:** YOUR HONOR, JUST ONE POINT. I KNOW
17 THE COURT UNDERSTANDS OUR ARGUMENT, THERE'S LACK OF
18 STANDING, NO 6TH AMENDMENT VIOLATION HERE, THAT THE PROPER
19 MEANS FOR THE BLEASE CORPORATION TO CHALLENGE THIS ASSET
20 IS AN ANCILLARY -- RESTRAINING THIS ASSET WOULD BE AN
21 ANCILLARY PROCEEDING.

22 ON ONE POINT I DO WANT TO BE CLEAR. OUR CASE LAW
23 SUBMITTED BOTH IN OUR ORIGINAL APPLICATION AND IN OUR
24 BRIEF SHOWS THAT THE FACE OF THE INDICTMENT PROVIDES
25 PROBABLE CAUSE. TO THE EXTENT YOU WISH TO LOOK BEHIND IT,

1 WE ALSO HAVE THE AGENT'S AFFIDAVIT AND THE MATERIALS
2 BEFORE YOU.

3 WHILE MR. SHANAHAN CHALLENGES THAT THEY STACK UP TO
4 PROBABLE CAUSE ON AT LEAST ONE POINT WHERE HE EXPRESSED
5 GREAT OUTRAGE THAT WE WOULD SUGGEST HIS FIRM EVER
6 REPRESENTED LANCE GILMAN, I WOULD ASK THE COURT TO TURN TO
7 GOVERNMENT'S EXHIBIT 4, WHICH IS THE ASSET PURCHASE
8 AGREEMENT BETWEEN GILMAN AND STOKES. THE VERY LAST PAGE,
9 THE VERY LAST PARAGRAPH, PARAGRAPH Q. "BOTH PARTIES
10 ACKNOWLEDGE THAT SHANAHAN LAW GROUP ACTED AS COUNSEL FOR
11 BOTH BUYER AND SELLER, AND HEREBY WAIVE ANY CONFLICT OF
12 INTEREST." THE BUYER, SIGNED BELOW, IS LANCE GILMAN. HIS
13 FIRM REPRESENTED LANCE GILMAN. I THINK YOU WOULD FIND THE
14 GOVERNMENT'S APPLICATION IS SOUND.

15 **THE COURT:** ALL RIGHT. THE COURT WILL TAKE A
16 RECESS UNTIL -- WELL, MR. SHANAHAN, DO YOU WANT TO SAY
17 ANYTHING ELSE?

18 **MR. SHANAHAN:** THE LAST POINT I WANTED TO MAKE,
19 THE STANDING ISSUE THEY KEEP MENTIONING. IT SEEMS ODD, I
20 THINK THEY HAVE, IN EFFECT, ACKNOWLEDGED OR FORCED
21 STANDING BECAUSE THEY ARE CLAIMING THAT THE MONEY IS IN
22 FACT STOKES'. SO HOW -- AND THAT'S THE BASIS FOR SAYING
23 YOU SHOULD TIE IT UP. IT'S HIS MONEY EVEN THOUGH --

24 **THE COURT:** AS I UNDERSTAND MR. HOWARD'S
25 ARGUMENT, I'LL LET HIM CLARIFY, HIS ARGUMENT IS PRECISELY

1 IT IS MR. STOKES' MONEY AND IT OUGHT TO BE FROZEN. BUT IF
2 HE CONTENTS IT'S NOT HIS MONEY, HE DOESN'T HAVE STANDING
3 TO COMPLAIN ABOUT IT AND ONLY BLEASE CAN COME IN HERE.

4 **MR. HOWARD:** THAT'S CORRECT. NOW THAT YOU
5 SUMMARIZED MY ARGUMENT, I WANT TO POINT OUT, IF THE BLEASE
6 CORPORATION IS THE ONE MAKING MONEY, WE'RE CONTENT WITH A
7 BOND FROM BLEASE.

8 SECONDLY, YOUR HONOR, SOUNDS LIKE YOU WANT TO TAKE A
9 RECESS. MR. WEST HAS PRE-ARRANGED TRAVEL PLANS AND NEEDS
10 TO LEAVE THE BUILDING AT 11:30. IF IT PLEASE THE COURT,
11 HE WOULD GO AHEAD AND INTEND TO DO THAT.

12 **THE COURT:** ALL RIGHT. THAT'S FINE. HE'S ON
13 YOUR SIDE OF THE TABLE. IF YOU WANT TO LET HIM GO, THAT'S
14 FINE. I DON'T HAVE ANY PROBLEM WITH THAT.

15 **MR. SHANAHAN:** ALL WE'RE SAYING, SEEMS LIKE A
16 CATCH 22, BUT IN ANY EVENT HE IS A THIRD PARTY BENEFICIARY
17 NOW THAT BLEASE HAS AGREED TO ALLOW -- TO MAKE HIM A LOAN
18 FOR THE 250. HE'S A THIRD PARTY BENEFICIARY IN BLEASE'S
19 RIGHT TO PURSUE THAT CLAIM.

20 **THE COURT:** WHAT DO YOU HAVE TO SAY TO
21 MR. HOWARD'S POINT THAT THE GOVERNMENT WOULD TAKE A BOND
22 FROM WHOMEVER? IT'S SOMETHING TO SECURE AND I GATHER,
23 MR. HOWARD, ARE YOU TALKING ABOUT SECURING THE 350.
24 THAT'S THE AMOUNT PAYMENT.

25 **MR. HOWARD:** I THINK IT WOULD ONLY NEED TO BE

1 250, IF THEY WOULD AGREE TO RETAIN THE OTHER HUNDRED,
2 BECAUSE ONLY 250 IS NEEDED FOR THE FEE.

3 **THE COURT:** WHAT DO YOU HAVE TO SAY ABOUT THAT,
4 MR. SHANAHAN?

5 **MR. SHANAHAN:** SOUNDS LIKE WE'RE NEGOTIATING A
6 SETTLEMENT, JUDGE, AND I JUST DON'T THINK THEY GET TO THE
7 PROBABLE CAUSE ISSUE. I DON'T KNOW HOW YOU WOULD REALLY
8 STRUCTURE -- YOU KNOW, ALL OF HIS ASSETS ARE REALLY HIS
9 WIFE'S. AGAIN, HE'S CREATING AN IMPEDIMENT TO HIS RIGHT
10 TO GET COUNSEL. HE'S WILLING TO PUT -- BLEASE COMPANY IS
11 WILLING TO LET THE HUNDRED BE HELD, LET THE 250 BE
12 RELEASED SO HE CAN HAVE COUNSEL, AND THEN WE'LL GET ON
13 DOWN THE ROAD.

14 THE ONLY THING HE COULD DO TO PUT UP A BOND WOULD BE
15 TO PLEDGE OTHER ASSETS THAT HE HAS. THAT'S THE PROBLEM,
16 HE DOESN'T HAVE OTHER ASSETS THAT ARE NOT TIED UP, OTHER
17 THAN HIS EQUITY, HIS SHARE OF THE ENTIRE PROPERTY.

18 **THE COURT:** OKAY. WE'LL TAKE A RECESS UNTIL
19 11:15 A.M. MR. WEST, YOU ARE PERMITTED TO LEAVE TO
20 TRAVEL.

21 (RECESS TAKEN.)

22 **THE COURT:** ANYTHING ELSE FROM THE GOVERNMENT,
23 MR. HOWARD?

24 **MR. HOWARD:** JUST BRIEFLY TO MAKE AN EFFORT TO
25 DISTINGUISH THIS CASE, GONZALES-LOPEZ WHICH CAME UP.

1 BEFORE GONZALES-LOPEZ, A PREVIOUS HOLDING OF THE SUPREME
2 COURT WAS KAPLAN AND DRYSDALE. IN THERE, THAT COURT HELD
3 THAT, A DEFENDANT IS NOT DENIED COUNSEL OF CHOICE, WHEN A
4 PRETRIAL ORDER FREEZES ASSETS BELIEVED SUBJECT TO
5 FORFEITURE, EVEN THOUGH THOSE ASSETS WOULD OTHERWISE BE
6 USED TO PAY FOR DEFENDANT'S COUNSEL.

7 WE BELIEVE THE MOST IMPORTANT ASPECT OF THE
8 GONZALES-LOPEZ DECISION ARE THE LAST WORDS OF THE MAJORITY
9 OPINION. SECTION FOUR, JUST BELOW THE HEADNOTE, PAGE 151
10 OF THE WESTLAW PRINT-OUT, WHICH SAYS: NOTHING WE HAVE
11 SAID TODAY CASTS ANY DOUBT OR PLACES ANY QUALIFICATION
12 UPON OUR PREVIOUS HOLDINGS THAT LIMIT THE RIGHT TO COUNSEL
13 OF CHOICE.

14 THEY ARE TALKING ABOUT KAPLAN AND DRYSDALE.

15 **THE COURT:** ANYTHING ELSE, MR. SHANAHAN?

16 **MR. SHANAHAN:** NO, SIR.

17 **THE COURT:** MR. HOWARD, DO YOU THINK THAT THE
18 GILMAN AGENCY NEEDS NOTICE BEFORE THIS COURT WERE TO ISSUE
19 AN INJUNCTION?

20 **MR. HOWARD:** YOUR HONOR, I UNDERSTAND THAT
21 MR. AYERS IS PREPARED AND READY TO ACCEPT AN ORDER FROM
22 THE COURT AND WILL GIVE HIM DIRECTION RIGHT AWAY.

23 **THE COURT:** AND YOUR PROPOSED INJUNCTION,
24 MR. HOWARD, DOESN'T MENTION THE BLEASE COMPANY. I THINK
25 IT NEEDS TO BE NAMED. OR DO YOU THINK THAT'S JUST WITHIN

1 YOUR PROPOSED LANGUAGE ABOUT PERSONS IN ACTIVE CONCERT OR
2 PARTICIPATION WITH THE DEFENDANT, ON PAGE THREE?

3 **MR. HOWARD:** YOUR HONOR, WE THINK THAT IS BROAD
4 ENOUGH TO EMBRACE THAT FULL UNIVERSE, TO INCLUDE THE
5 BLEASE CORPORATION. I COULDN'T IMAGINE MR. GILMAN OR HIS
6 AGENCY WOULD BE CONFUSED AS TO THE PAYMENT AT ISSUE.

7 WE ARE GLAD TO MOVE THE COURT TO INCLUDE IT IN
8 GREATER SPECIFICITY. WE WOULD HAVE NO OBJECTION TO THAT
9 INCLUSION.

10 **THE COURT:** MR. HOWARD, YOU ALSO FILED A MOTION
11 TO KEEP YOUR LATEST FILING UNDER SEAL. DO YOU WANT ALL
12 THE PAPERS STILL TO BE UNDER SEAL IN THIS CASE?

13 **MR. HOWARD:** YOUR HONOR, THAT'S A VERY GOOD
14 QUESTION. I ONLY DID THAT BECAUSE THE COURT'S ORDER
15 CALLING FOR THIS HEARING NOTED THEY SHOULD ALL BE SEALED.
16 IF THERE'S NO OBJECTION FROM THE DEFENSE, I DON'T SEE ANY
17 REASON WHY THEY NEED TO REMAIN UNDER SEAL.

18 **THE COURT:** WHAT'S YOUR VIEW ON THAT, MR.
19 SHANAHAN?

20 **MR. SHANAHAN:** OTHER THAN THE FACT HIS BRIEF
21 CITES ALL SORTS OF FACTS THAT AREN'T SUPPORTED, WE'RE A
22 LITTLE CONCERNED ABOUT IT. OTHER THAN THAT, I SUPPOSE --
23 I CAN'T THINK OF A REASON THAT IT WOULD NEED TO BE SEALED.

24 **THE COURT:** ALL RIGHT. THE COURT IS GOING TO
25 UNSEAL THE PLEADINGS. WELL, THE PAPERS THAT HAVE BEEN

1 FILED IN CONNECTION WITH THE GOVERNMENT'S MOTION,
2 APPLICATION, PROPOSED ORDER, THE MEMORANDUM OF LAW THAT
3 THEY FILED UNDER SEAL. SO TO THE EXTENT THERE ARE ANY
4 MOTIONS ON THE DOCKET THAT ARE LIVE MOTIONS THAT NEED TO
5 BE RULED ON IN CONNECTION WITH SEALING ISSUES, THE MOTIONS
6 TO SEAL ARE EITHER LIFTED OR THE MOTIONS TO SEAL ARE
7 DENIED. THE PAPERS THAT HAVE BEEN PREVIOUSLY SEALED CAN
8 BE UNSEALED AND CAN BE MADE A PART OF THE RECORD IN THIS
9 CASE THAT'S AVAILABLE TO THE PUBLIC.

10 THE COURT NOTES THAT 21 USC, SECTION 853(E)(1)
11 PROVIDES THAT, "UPON APPLICATION OF THE UNITED STATES, THE
12 COURT MAY ENTER A RESTRAINING ORDER OR INJUNCTION, REQUIRE
13 THE EXECUTION OF A SATISFACTORY PERFORMANCE BOND OR TAKE
14 ANY OTHER ACTION TO PRESERVE THE AVAILABILITY OF PROPERTY
15 DESCRIBED IN SUBSECTION A OF THIS SECTION FOR FORFEITURE
16 UNDER THIS SECTION."

17 SUBPARAGRAPH A OF 21 USC SECTION 853(U)(1)(A) STATE,
18 "UPON THE FILING OF AN INDICTMENT OR INFORMATION CHARGING
19 A VIOLATION OF THIS SUBCHAPTER OR SUBCHAPTER 2 OF THIS
20 CHAPTER FOR WHICH CRIMINAL FORFEITURE MAY BE ORDERED UNDER
21 THIS SECTION AND ALLEGING THAT THE PROPERTY WITH RESPECT
22 TO WHICH THE ORDER IS SOUGHT WOULD, IN THE EVENT OF
23 CONVICTION, BE SUBJECT TO FORFEITURE UNDER THIS SECTION."

24 THIS IS THE PROVISION WHICH THE GOVERNMENT IS SEEKING
25 TO PROCEED IN THIS CASE WITH A CROSS-REFERENCE TO 18 USC

1 SECTION 982(B)(1). THAT PORTION OF THE UNITED STATES CODE
2 CROSS-REFERENCES 21 USC, SECTION 853(E)(1). THE COURT
3 NOTES THAT THE PROPERTY AT ISSUE IN THIS -- WELL, THE
4 COURT NOTES THE UNITED STATES HAS MADE AN APPLICATION IN
5 THIS COURT PURSUANT TO 21 USC, SECTION 853(E)(1)(A) FOR
6 RESTRAINING ORDER TO PRESERVE THE AVAILABILITY OF CERTAIN
7 PROPERTY THAT IS THE SUBJECT -- EXCUSE ME -- THAT IS
8 SUBJECT TO FORFEITURE IN THE ABOVE-STYLED CRIMINAL ACTION.

9 AFTER FULLY CONSIDERING ALL THE EVIDENCE PRESENTED AT
10 THE HEARING, ALL THE INFORMATION PRESENTED BY WAY OF
11 ARGUMENT FROM COUNSEL, AND ALL EVIDENCE IN THE RECORD, AND
12 HAVING FULLY CONSIDERED THE ARGUMENTS OF COUNSEL, THE
13 COURT DOES FIND THAT THERE IS REASONABLE CAUSE TO ENTER A
14 RESTRAINING ORDER TO PRESERVE THE SUBJECT PROPERTY.

15 THE COURT NOTES THAT A FEDERAL GRAND JURY IN THE
16 EASTERN DISTRICT OF NORTH CAROLINA HAS RETURNED AN
17 INDICTMENT AGAINST ROBERT CARL STOKES ON CHARGES OF
18 CONSPIRACY TO MAKE FALSE STATEMENTS, IN VIOLATION OF 18
19 USC, SECTION 1014; TWO SUBSTANTIVE COUNTS OF AIDING AND
20 ABETTING, MAKING OF FALSE STATEMENT, IN VIOLATION OF
21 SECTION 1014 AND 2; AND CONSPIRACY TO COMMIT MONEY
22 LAUNDERING, IN VIOLATION OF 18 USC, SECTION 1956(H).

23 THE INDICTMENT ALLEGES CRIMINAL FORFEITURE UNDER 18
24 USC, SECTION 981(A)(1)(C), AS MADE APPLICABLE BY 28 USC,
25 SECTION 2461 AND 18 USC, SECTION 982 OF CERTAIN PROPERTY

1 IN WHICH ROBERT CARL STOKES HOLDS AN INTEREST, TO WIT,
2 \$3.4 MILLION, AS WELL AS ANY SUBSTITUTE ASSETS, SHOULD
3 SAID FUNDS NOT BE LOCATED.

4 THE COURT NOTES THE PROPERTY AT ISSUE IN THIS CASE IS
5 A \$350,000 PAYMENT THAT IS DUE FROM GILMAN INSURANCE
6 AGENCY TO BLEASE COMPANY. THIS TRANSACTION IS AS A RESULT
7 OF NUMEROUS OTHER TRANSACTIONS. THE EVIDENCE INDICATES
8 THAT THE DEFENDANT WAS THE PRESIDENT AND OPERATED THE
9 HALLMART INSURANCE AGENCY. THAT AGENCY SOLD ITS ASSETS TO
10 GILMAN INSURANCE AGENCY, AS REFLECTED IN GOVERNMENT'S
11 EXHIBIT 4. AS A RESULT OF THAT AGREEMENT, GILMAN
12 INSURANCE COMPANY OWED HALLMART CERTAIN PAYMENTS DUE ON
13 DECEMBER 15, INCLUDING A PAYMENT OF \$350,000.

14 AFTER THAT TRANSACTION, HALLMART DISSOLVED. BLEASE
15 ACQUIRED THE ASSETS OF HALLMART. PURSUANT TO PARAGRAPH 3D
16 OF GOVERNMENT'S EXHIBIT 4, THE PAYMENT NOW IS DUE TO
17 BLEASE FROM GILMAN. THE DEFENDANT'S WIFE IS THE PRESIDENT
18 AND OWNER OF BLEASE.

19 BLEASE COMPANY, ACCORDING TO THE EVIDENCE, HAS AGREED
20 TO LOAN \$250,000 TO THE DEFENDANT OUT OF THE \$350,000 THAT
21 IS OWED BY GILMAN INSURANCE AGENCY. BLEASE HAS INSTRUCTED
22 GILMAN INSURANCE TO PAY \$250,000 TO THE DEFENDANT'S
23 LAWYER'S LAW FIRM, SHANAHAN LAW GROUP, AND PAY A HUNDRED
24 THOUSAND DOLLARS TO BLEASE.

25 THE GOVERNMENT SEEKS TO RESTRAIN THIS PROPERTY. THE

1 COURT DOES FIND THAT THE EVIDENCE IN THE RECORD IN THIS
2 CASE, AFTER THE COURT HAS FULLY CONSIDERED IT ALL,
3 ESTABLISHES SUFFICIENT PROBABLE CAUSE FOR THE ISSUANCE OF
4 A RESTRAINING ORDER.

5 IF ROBERT CARL STOKES IS CONVICTED OF THE CHARGES
6 ALLEGED IN THE INDICTMENT, THE SUBJECT PROPERTY WOULD BE
7 SUBJECT TO FORFEITURE UNDER 18 USC, SECTION 981(A)(1)(C)
8 AND 982, AT LEAST UP TO THE VALUE OF \$3.4 MILLION AS
9 SUBSTITUTE ASSETS. THERE'S A NEED TO PRESERVE THE
10 AVAILABILITY OF THE SUBJECT PROPERTY THROUGH THE ENTRY OF
11 THE ORDER REQUESTED HEREIN. THAT NEED OUTWEIGHS THE
12 HARDSHIP OF ANY PARTY AGAINST WHOM THE ORDER IS TO BE
13 ENTERED. SHOULD THE PAYMENT BE MADE, THE DEFENDANT COULD
14 SPEND, INCUMBER, OR OTHERWISE DISSIPATE OR PLACE THE MONEY
15 BEYOND THE JURISDICTION OF THE COURT.

16 ANY THIRD PARTY CLAIMS TO THE SUBJECT PROPERTY MAY BE
17 PROPERLY BROUGHT AND RESOLVED IN AN ANCILLARY PROCEEDING
18 CONDUCTED BY THE COURT FOLLOWING THE EXECUTION OF THE
19 PRELIMINARY ORDER OF FORFEITURE AND IN ACCORDANCE WITH THE
20 PROVISIONS OF 21 USC SECTION 853(N).

21 IT IS HEREBY ORDERED AND DECREED THAT EFFECTIVE
22 IMMEDIATELY, ROBERT CARL STOKES, HIS AGENTS, SERVANTS,
23 EMPLOYEES, ATTORNEYS, FAMILY MEMBERS, AND THOSE PERSONS OF
24 ACTIVE CONCERT OR PARTICIPATION WITHIN, INCLUDING BLEASE
25 COMPANY, INC., ARE HEREBY RESTRAINED, ENJOINED, AND

1 PROHIBITED WITHOUT PRIOR APPROVAL OF THIS COURT AND UPON
2 NOTICE TO THE UNITED STATES AND OPPORTUNITY FOR THE UNITED
3 STATES TO BE HEARD, FROM THE RECEIPT OF ANY FUNDS FROM THE
4 GILMAN INSURANCE SERVICES, INCORPORATED, PURSUANT TO THE
5 ASSET PURCHASE AGREEMENT DATED SEPTEMBER 21, 2007.

6 IT IS FURTHER ORDERED THE PAYOR, GILMAN INSURANCE
7 SERVICES, SHALL MAKE THE PAYMENT DUE HALLMART INSURANCE
8 AGENCY, INC., ON OR ABOUT DECEMBER 15, 2008, AS WELL AS
9 FUTURE PAYMENTS DUE UNDER THE ASSET PURCHASE AGREEMENT TO
10 THE INTERNAL REVENUE SERVICE, PAYABLE TO THE UNITED STATES
11 TREASURY, WHICH PAYMENT SHALL BE HELD BY THE GOVERNMENT
12 PENDING DISPOSITION BY ORDER OF THIS COURT.

13 IT IS FURTHER ORDERED THAT THE UNITED STATES OR ANY
14 SUBJECT OF THIS ORDER MAY SEEK MODIFICATION OF THIS ORDER
15 IF IT IS DEEMED NECESSARY BY THEM TO PRESERVE THEIR
16 INTEREST IN THE SUBJECT PROPERTY. IT IS FURTHER ORDERED
17 THAT ANY SUBJECT OF THIS ORDER SHALL BE PERMITTED TO
18 EXECUTE A SATISFACTORY PERFORMANCE BOND, PURSUANT TO 21
19 USC, SECTION 853(E)(1), AS AN ALTERNATIVE TO THE RESTRAINT
20 OF THE SUBJECT PROPERTY. AFTER NOTICE TO THE UNITED
21 STATES AND AN OPPORTUNITY TO BE HEARD, THE COURT SHALL
22 DETERMINE WHETHER ANY PROPOSED BOND IS A SATISFACTORY
23 PERFORMANCE BOND.

24 IT IS FURTHER ORDERED THAT THE SECRETARY OF THE
25 TREASURY OR HIS DESIGNEE SHALL PROMPTLY SERVE A COPY OF

1 THIS RESTRAINING ORDER UPON ROBERT CARL STOKES, THE
2 HALLMART AGENCY, INC., BLEASE COMPANY, INC., AND GILMAN
3 INSURANCE SERVICES, INC., AND SHALL MAKE A RETURN THEREON
4 REFLECTING THE DATE AND TIME OF SERVICE.

5 IT IS FURTHER ORDERED THAT THIS ORDER, AS WELL AS THE
6 MOTION MADE BY THE GOVERNMENT, SHALL BE SEALED UNTIL --
7 EXCUSE ME -- THIS RESTRAINING ORDER SHALL REMAIN IN FULL
8 FORCE AND EFFECT UNTIL FURTHER ORDER OF THE COURT. EXCUSE
9 ME -- THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT
10 UNTIL FURTHER ORDER OF THE COURT.

11 THE COURT HAS REVIEWED THE GONZALES-LOPEZ CASE. THE
12 COURT REVIEWED THE MONSANO CASE, THE COURT HAS REVIEWED
13 KAPLAN AND DRYSDALE. THE COURT BELIEVES GONZALES-LOPEZ IS
14 DISTINGUISHABLE AND THAT THE MAJORITY OPINION IN
15 GONZALES-LOPEZ DOES NOT ALTER, AFFECT THE SUPREME COURT'S
16 ANALYSIS IN KAPLAN AND DRYSDALE.

17 THE COURT ALSO HAS TAKEN INTO ACCOUNT AND REVIEWED
18 ALL THE CASES CITED IN THE VARIOUS PAPERS SUBMITTED IN
19 THIS CASE.

20 MR. HOWARD, ANYTHING ELSE WE NEED TO TAKE UP TODAY?
21 THE COURT WILL ENTER A WRITTEN ORDER.

22 **MR. HOWARD:** NOTHING FROM THE GOVERNMENT, YOUR
23 HONOR. THANK YOU.

24 **THE COURT:** ANYTHING ELSE?

25 **MR. SHANAHAN:** YOUR HONOR, WE WOULD ASK YOU ADD

1 TO THE ORDER -- IT'S AN IMMEDIATELY APPEALABLE ORDER, TO
2 CERTIFY FOR APPEAL TO THE 4TH CIRCUIT THE STATED ACTIONS
3 AND ALL OTHER ACTIONS IN THIS CASE.

4 **THE COURT:** ALL RIGHT. THE COURT WILL ADDRESS
5 THAT IN THE WRITTEN ORDER. YOU MOVE TO STAY ALL
6 PROCEEDINGS?

7 **MR. SHANAHAN:** YES, SIR.

8 **THE COURT:** OKAY. ALL RIGHT. THE COURT WILL BE
9 IN RECESS.

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20 END OF TRANSCRIPT
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1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
3 PROCEEDINGS TAKEN AT THE CRIMINAL SESSION OF UNITED STATES
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE
5 PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
6 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 10TH DAY OF MARCH, 2009.

8
9 /S/DONNA J. TOMAWSKI

10 DONNA J. TOMAWSKI
11 OFFICIAL COURT REPORTER
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